

Meeting Minutes

**MEETING OF THE PROFESSIONAL ENGINEERING
COMMITTEE of the Board Licensure for Professional
Engineers and Professional Surveyors held at
1:00 p.m., Thursday, April 11, 2024,
San Juan College, Classroom 1217
4601 College Boulevard, Farmington, NM 87402
& Virtual**

Members Present- Elizabeth McNally, PE, Vice Chair
Dr. Ahmed Elaksher, PEPS
Karl Tonander, PE
Emilie Dohleman, PE

Members Absent- Karen Nichols, Public Member, Committee Chair
Stephen Ney, PE

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, BLPEPS, Administrative Manager
Jessie James, BLPEPS, Compliance Officer
Adam Baker, Esq., Administrative Prosecutor
Joe Barela, PE, Board Investigator
Dan Flack, PE, Board Investigator
Daniel Grijalva, PE, Board Investigator
Earl Burkholder, PEPS
Sergio Valora Sandoval
Greg Wirth

1. Convene, Roll Call and Introduction of Audience

Ms. Valdez read the meeting script regarding the hybrid meeting protocols. Ms. McNally convened the meeting at 1:06 p.m. Roll call was taken and a quorum was noted. Audience introductions were made at this time.

2. Meeting Notification

Mr. Valdez informed the Committee the meeting was noticed on the Board's website and at the Board Office.

3. Approval of Agenda

MOTION by Mr. Tonander to approve the agenda as presented, **SECONDED** by Ms. Dohleman,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

4. **Approval of Minutes**

- a. **Minutes of January 11, 2024**
- b. **Minutes of February 16, 2024**

MOTION by Mr. Tonander to approve the Minutes of January 11, 2024, and February 16, 2024, as presented, **SECONDED** by Dr. Elaksher,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

5. **Public Comment/Correspondence**

- a. **N. Agbayani – License Renewal**

Ms. Gonzales informed the Committee that Mr. Agbayani contacted her and decided not to attend the meeting. He said the information provided for his application should be sufficient.

- b. **S. Calvert - Advisory Opinion Request**

Mr. Valdez introduced the item, noting that Mr. Calvert requested an advisory opinion from the Board. Mr. Calvert outlined the issue his client is experiencing and the request they received. In the letter, Mr. Calvert stated that the Regulation and Licensing Department's (RLD) Construction Industries Division (CID) informed his client that the services being requested "*require the possession of a contractor's license and that an engineer may not perform them under its engineering license*", based on the interpretation of 60-13-3 (C), NMSA 1978.

Mr. Valdez concluded that in Mr. Calvert's opinion, as stated in his letter, section three of this statute "*creates at a minimum a presumption that licensed architects and engineers acting as owner consultants are not construction managers and need not possess a contractor's license*". Mr. Calvert is requesting clarification regarding this issue from the Board.

Ms. Dohleman commented that the description of the work provided does not appear to be engineering. She said it appears to be more along the lines of project management, construction inspection, or project coordination.

Dr. Elaksher agreed with Ms. Dohleman.

Ms. McNally agreed that the work described does not appear to be engineering.

Mr. Tonander noted that Mr. Calvert indicated that licensed architects and

engineers acting as owner consultants are not construction managers and need not possess a contractor's license. He pointed out that CID requires a license through them for the work described. Mr. Tonander also did not see the work as the practice of engineering. Noting that CID could request an additional license from the individual and the Board, not having a say on the request.

Ms. McNally asked Mr. Tonander for his thoughts on the best approach to respond to Mr. Calvert.

Mr. Tonander suggested sending a letter responding to this request, rather than an advisory opinion.

Ms. Dohleman asked if it was possible to reach out to CID to make sure the Board isn't interfering with their requirements and to verify what is being stated in Mr. Calvert's letter.

Mr. Tonander responded that CID promulgates their own rules, and it would be imprudent to interfere with that.

Ms. Hovie requested to review the drafted response letter before it is sent to Mr. Calvert.

c. W. Bruno – PNM Response

Mr. Valdez introduced the response document from PNM to Mr. Bruno. The document is PNM's response to Mr. Bruno's objections to PNM's smart meter project which he presented to the Board at the industrial exemption meetings.

Mr. Valdez reminded the Committee that they directed him to forward the documents provided by Mr. Bruno to the PRC for their consideration. He informed the members that he did so, to this date he had not heard back from the PRC regarding those documents he sent them.

Ms. McNally thanked Mr. Bruno and Mr. Valdez for the information provided.

6. Old Business

Mr. Valdez informed the Committee that there was no old business for discussion.

7. New Business

a. Advisory Opinion NCEES CPC Standard

Mr. Valdez presented the drafted advisory opinion by Mr. Gromatzky. He said that this item came up in one of the industrial exemption questions. The

document presented was Mr. Gromatzky's initial draft, and is on the Full Board agenda for the Board's consideration.

Mr. Tonander requested removing the second sentence from the draft advisory opinion. The reason for the change is because of some information he was made aware of from NCEES. He elaborated that there were some edits being proposed to the NCEES CPC standard as to what are qualifying activities. The sentence to be stricken was: "Qualifying activities for earning Professional Development Hours (PDHs) per NMAC 16.39.2.8 are identical to the CPC standard."

Mr. Tonander suggested a change to the word "identical" to "substantially equivalent" instead of removing the sentence.

Mr. Tonander asked if the NCEES CPC standard meets the New Mexico PDH requirements or is it in compliance with or is it actually the CPC standard? Does the standard meet the requirements or does compliance with the standard meet the requirements?

Mr. Valdez responded it should be compliance with the standard. Mr. Tonander agreed. Therefore, the edit should be, "Compliance with the Continuing Professional Competency (CPC) standard by the National Council of Examiners for Engineering and Surveying (NCEES) meets the State of New Mexico requirements for Continuing Professional Development Requirements of NMAC 16.39.2.8."

Ms. McNally said the proposed advisory opinion could be further edited tomorrow at the Full Board meeting.

b. Engineer Intern certification for Professional Engineer endorsement applicants

Mr. Valdez requested clarification from the Committee regarding the requirement for the Engineer Intern certification for those applicants applying for licensure by endorsement.

He explained there are some applicants who apply for endorsement, that have passed the FE exam, and they do not have the Engineer Intern (EI) certification. The reason for this could either be the state the applicant took the FE exam doesn't recognize the EI certification or the applicant never pursued certification. Mr. Valdez said the Practice Act requires certification, so when staff catch this, we would require the applicant to apply for certification before licensure. Staff

and I are seeking clarification if it is necessary to continue this process or to verify the applicant passed the FE exam and not necessarily that they are certified.

Mr. Tonander asked Mr. Valdez what the Practice Act allows?

Mr. Valdez responded by reading section 61-23-14.1 of the Practice Act, "B. An applicant may be licensed through examination if the applicant can demonstrate the following: (1) the applicant is certified as an engineer intern and has at least one of the following combinations of education and experience..." and "(2) the applicant is not certified as an engineer intern and has at least one of the following..."

Mr. Valdez noted the rules are silent on the Intern certification requirement, they state the requirements of having passed the exams.

Ms. Dohleman asked if staff has been presenting these applicants to the Committee?

Ms. Gonzales responded they have not, she said staff has been requesting the applicant to apply for certification. The issue is that the application fee is now \$100 and the certification number is superseded by the licensure number once they are licensed.

Mr. Tonander suggested making an adjustment to the fee schedule, advising the applicants if you registered as an EI via comity within the last six months, that \$100 applies towards your PE, and then the Board doesn't have to make any changes to the statute.

Mr. Valdez informed the Committee this item will be on the agenda for the June 2024 Full Board meeting.

c. NM Handbook for Building Officials

Mr. Valdez informed the Committee that there exists a Joint Practice Committee (JPC), it is a committee comprised of the Architect's Board, Landscape Board and the Board of Engineering and Survey. As well as a representative from CID. He explained that at the JPC's last meeting, they decided to update the Handbook for Building Officials because the last time it was updated was in 2016, which was quite some time ago.

Mr. Valdez said Mr. Ben Aragon is the current Chair of the JPC and requested each member Board of the JPC review and provide any necessary revisions or

edits. Mr. Aragon is asking for any changes by the June meeting so we can combine them and incorporate them into a draft at the next JPC meeting. Mr. Valdez informed the members that he would be sharing a Word version.

d. JPC Referred Questions

1) Can Engineers or Architects conduct virtual inspections?

Mr. Valez explained the next two questions were asked by Mr. Martin Romero, the Bureau Chief from CID, a member of the JPC.

Mr. Valdez stated Mr. Romero informed the JPC that CID is experiencing a number of engineers and architects not wanting to go out to a site to do an in-person physical inspection, just do a virtual inspection. Several members of the JPC agreed that inspections should be done in person because something could be missing if done virtually.

Ms. McNally asked Mr. Flack how he conducted inspections.

Mr. Flack responded that when someone emails him pictures, he doesn't provide an inspection opinion, however he uses inspectors for inspections.

Mr. Tonander commented he has a construction observer overseeing an excavation or something along that nature. If he receives a call, photograph, or video from his construction observers in the field and they're operating under his direct supervisory control he would virtually inspect what they are asking of him, which is different than a random person taking snapshots.

Mr. Tonander is wondering if Mr. Romero is asking if this is through a construction observer or through a random person.

Mr. Dohleman provided insight into the discussion, she said she was a little nervous about this type of inspection because without some guidelines, how would you conduct a virtual inspection? She added, you could easily miss something, they should have photographed something, and they didn't.

2) Is an architect or engineer stamp a form of copyright?

Ms. McNally stated she wanted to know what the exact meaning of copyright was and if there are other terms.

Ms. Dohleman expressed her concern that it is illegal to take someone else's work and use it as your own. Whether it's theft or what, it seems

even without a copyright decision, there are other things that would make the use of someone else's work illegal.

Mr. Valdez offered to invite Mr. Romero to the next meeting for further clarification on the question.

Ms. McNally decided to continue the discussion at the next meeting with Mr. Romero and the Board's Legal Counsel for their opinion on the subject.

8. **Application Review – Recommended Approval**

a. **Confirmation of Staff Reviewed Applications**

The Committee acknowledged the confirmation of staff reviewed applications.

b. **PE Retired Status Request**

c. **PE Inactive Status Request**

MOTION by Mr. Tonander to approve the retired and inactive status requests, **SECONDED** by Ms. McNally,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously**.

9. **Closed Session**

MOTION by Ms. McNally that the Committee enter into Closed Session at 1:53 p.m. to discuss the items listed on the agenda pursuant to NMSA 1978, Section 10-15-1 (H) (1) and (3) to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license and to deliberate on pending cases, **SECONDED** by Ms. Dohleman.

Roll call vote taken, voting 'Yes': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

10. **Action on Items Discussed During Executive Session**

Ms. McNally brought the Committee back into open session at 4:18 p.m. and affirmed that while in closed session it discussed only those matters specified in the motion to close the meeting and listed on the agenda under closed session, in accordance with NMSA 1978 Section 10-15-1 (H) (1) and (3).

a. **Disciplinary Cases**

1) **Case 6-PE-09-29-2022 (A) Investigator's Report**

2) **Case 6-PE-09-29-2022 (B) Investigator's Report**

MOTION by Mr. Tonander to refer the cases to the Administrative Prosecutor for the issuance of an NCA, **SECONDED** by Ms. McNally,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

3) Case 2-PE-2023 Investigator's Report

MOTION by Mr. Tonander to acknowledge the Investigator's report and take no further action, **SECONDED** by Dr. Elaksher,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

4) Case 4-PE-2023 Investigator's Report

MOTION by Ms. Dohleman to attempt to enter into a pre-NCA settlement agreement with a fine of \$500 and that if no agreement is executed within 60 days, the matter will be automatically referred to the Administrative Prosecutor for the issuance of an NCA, **SECONDED** by Mr. Tonander,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

5) Case 6-PE-2023 Investigator's Report

MOTION by Ms. McNally to acknowledge the investigator's report and move to refer this case to Legal Counsel for follow up correspondence and then close the case, **SECONDED** by Mr. Tonander,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

6) Case 3-PE-2023 Investigator's Report

MOTION by Mr. Tonander to refer to the Administrative Prosecutor for the

issuance of an NCA, **SECONDED** by Ms. McNally,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

7) Case 4-PE-02-18-2022 Settlement Agreement

MOTION by Ms. Dohleman to accept the settlement agreement as presented by the Administrative Prosecutor Adam Baker, **SECONDED** by Ms. McNally,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Ms. Dohleman

Abstained: Mr. Tonander

The motion **PASSED.**

8) Case 1-PE-01-31-2022

9) Case 1-PE-2023

10) Case 5-PE-2023

MOTION by Ms. McNally to close the cases due to the fulfillment of their settlement agreements, **SECONDED** by Mr. Tonander,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

b. Self-Reporting

1) EB-01-09-2024

MOTION by Ms. McNally to acknowledge receipt and request status updates on the fulfillment of his case in Texas, **SECONDED** by Mr. Tonander,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

2) RSE-03-06-2024

MOTION by Ms. Dohleman to acknowledge receipt and remind the engineer to reinstate his lapsed license if he practices in New Mexico, **SECONDED** by Mr. Tonander,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

3) RVN-02-27-2024

MOTION by Ms. Dohleman to acknowledge receipt and take no further action, **SECONDED** by Ms. McNally,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

4) CMH-10-31-2023

5) CTS-11-08-2023

6) IG-12-29-2023

7) JLP-12-21-2023

MOTION by Ms. McNally to close the cases due to the fulfillment of their settlement agreements, **SECONDED** by Mr. Tonander,

Roll Call Vote:

Voting 'Aye': Ms. McNally, Dr. Elaksher, Mr. Tonander, Ms. Dohleman

The motion **PASSED unanimously.**

***The remainder of the agenda was tabled until a special meeting could be scheduled. ***

c. Status Review of Complaints and NCA Referrals

A report was reviewed on the status of pending cases and referrals for Notice of Contemplated Actions.

d. Applications for Review

1) PE Exam

- a) Barraza, A. – Reconsideration
- b) Bennett, Z.

- c) Garduno, S.
- d) Ramirez, M.
- e) Valora Sandoval, S.

2) PE Licensure

- a) Mondragon, Z. – Reconsideration
- b) Williams, E. – Reconsideration
- c) Wirth, G.

3) PE Endorsement

- a) Acharya, K.
- b) Caruso, C.
- c) Galant, G.
- d) Hahnenkamp, G.
- e) Hanes, J.
- f) Hesson, B.
- g) Holmes, M.
- h) Poland, D.

4) PE Reinstatement

- a) Ingebretson, R.

5) PE License Renewal

- a) Agbayani, N.

11. **Next Scheduled Meeting Date:** June 6, 2024 – Santa Fe/Virtual

12. Adjourn

The meeting was adjourned at 4:28 p.m.

Submitted by:

s/Perry Valdez

Perry Valdez, Executive Director

Approved by:

s/Elizabeth McNally

Elizabeth McNally, Committee Vice- Chair

June 6, 2024 **Approved Date**