



MAURA HEALEY
GOVERNOR

KIM DRISCOLL
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Division of Occupational Licensure

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AFFAIRS AND BUSINESS
REGULATION

SARAH R. WILKINSON
COMMISSIONER, DIVISION OF
OCCUPATIONAL LICENSURE

Minutes of the February 22, 2024 Open Meeting

Meeting was held remotely by video conference and telephone pursuant to Chapter 2 of the Acts of 2023: *An Act Making Appropriations for the Fiscal Year 2023 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects*, signed into law on March 29, 2023.

The following attendance was recorded:

Board Members Present Remotely

Paul Tyrell, PE, PLS, Chairman
Ronald Willey, PE, Vice Chairman
Paul Tsang, PE
Edward Englander, Esq., Public
Member
Daniel Caron, PE Kenneth
Anderson, PLS Nancy Gould, PE
Joyce Hastings, PLS

Board Members Absent

Azu Etoniru, PE, PLS

Members of the Public Present

Abbie Goodman, TECET
Ken Conte, MALSCE President
Connor Leavitt, PE Exam Applicant
Peter Hansen

**Division Staff Members Present
at Various Times during the Meeting:**

Kathleen McNally, Executive Director of
Various Boards
Jenna Hentoff, Board Counsel
Mary Pixley, Prosecuting Counsel
Philip Chan, Prosecuting Counsel
Bryan Freitas, Investigations
Supervisor
Eric Funk, Board Administrator

1. At 9:01AM, Executive Director Kathleen McNally provided notice that pursuant to M.G.L. Ch. 30A, § 20, the meeting would be recorded.



2. At 9:02AM, Kenneth Anderson motioned, seconded by Edward Englander, to open the meeting. Motion passed unanimously with a vote of 7-0. Members in Favor: Joyce Hastings, Paul Tsang, Dan Caron, Nancy Gould, Edward Englander, Paul Tyrell, and Kenneth Anderson, Members opposed: None.
3. Chairman Paul Tyrell welcomed Ed Englander back to the Board to again serve as the Public Member. This is Ed's second appointment to the Board. Chairman Paul Tyrell noted that to the best of his knowledge, this is the first time that a former Board member has been re-appointed to the Board. He further stated that Ed had been an integral part of the Board's Complaint Committee and hopes that he will be again.
4. The draft minutes for the January 25, 2024, Public Session and Executive Session were tabled until the March 28, 2024, meeting.
5. Chairman Paul Tyrell's safety item focused on the negative effects, both physically and mentally, that can result from fatigue and/or lack of sleep.
6. Chairman Paul Tyrell informed the Board that the next meeting was scheduled to be held on March 28, 2024. No conflicts were noted, and Executive Director Kathleen McNally stated that she would send the Teams calendar invite for that meeting and all future meetings for 2024.
7. Ronald Willey joined the meeting at 9:12AM.
8. Chairman Paul Tyrell reminded the Board that in January 2024, he reviewed the first ten (10) plans that had been recorded at the Suffolk County Registry of Deeds in 2024 and was appalled to discover that only one (1) of the ten (10) plans filed met the regulatory requirements of the Suffolk County Registry of Deeds and/or 250 CMR.

Kenneth Anderson stated that this is a pervasive and ongoing issue and, in his opinion, staff at the Registry of Deeds offices seem to care more about collecting the filing fees than following their own requirements. He further stated that some licensees are also not acting professionally by not complying with the requirements of 250 CMR.

Board Counsel Jenna Hentoff stated that the Board can request that OI conduct an investigation and/or they can file complaints where appropriate to address this issue. She recommended that Chairman Paul Tyrell, Joyce Hastings, Kenneth Anderson, and Azu Etoniru should bring forth any complaints for OI to investigate.

Abbie Goodman indicated that it was her understanding that per Division of Occupational Licensure (DOL) policy, Board members were prohibited from filing complaints. Board Counsel Jenna Hentoff clarified that was not the case.

Chairman Paul Tyrell acknowledged Ken Conte, President of MALSCE, who stated that MALSCE would be happy to file complaints if they were made aware of specific violations but lamented the fact that very few complaints of such violations have been brought to their attention over the years. He further stated that he would send out a notice to their membership regarding the matter to encourage them to bring forward any violations of either 250 CMR and/or the Registry of Deeds standards.

Board Counsel Jenna Hentoff stated that she would discuss the matter with General Counsel.

Executive Director Kathleen McNally asked if there was a filing checklist that Registry of Deeds staff was required to follow. Chairman Paul Tyrell stated that there are standards that must be met for a document to be filed at the Registry of Deeds and by not following the

standards, they are jeopardizing the licensees, who may not be aware that their work product has been filed, as well as the health, safety, and welfare of the public as once a document is filed, it will reside on record forever.

Kenneth Anderson advised that this is not unique to the Suffolk County Registry of Deeds office.

Ed Englander stated that each Registry of Deeds office has a different set of requirements or standards, which does not help.

9. Board Counsel Jenna Hentoff informed the Board that the draft language for Continuing Professional Competency (CPC) regulations remains under review with the Governor's Legal Office. She further stated that she would continue to follow-up with the DOL General Counsel for updates.
10. Board Counsel Jenna Hentoff informed the Board that there were no further legal topics for discussion.
11. Executive Director Kathleen McNally informed the Board that the revised and updated complaint tracking spreadsheet continues to undergo review and updating and that progress is being made.

She also informed the Board that the comprehensive review of the NCEES Enforcement Exchange also remains ongoing and where appropriate, disciplinary actions and dispositions taken by the Board are being reported and uploaded to the individual's NCEES Enforcement record.

She also advised the Board that in regard to matters with an executed consent agreement, there were two (2) matters, one (1) involving Jason Kahan, who holds a P.E. license to practice in Massachusetts, and one (1) involving Peter Lavoie, who does not hold a P.E. license in Massachusetts.

In the first matter 2022-000305-IT-ENF, Mr. Kahan acknowledged and admitted that he engaged in the practice of land surveying beyond the scope of his engineering license and further that it was not incidental to engineering work or done under the direct supervision of a registered land surveyor. Mr. Kahan paid a fine of three thousand (\$3,000.00) dollars.

In the second matter 2022-000933-IT-ENF, Mr. Lavoie acknowledge and admitted that he engaged in the unlicensed practice of engineering, in violation of G.L. c. 112, s. 65A and Board regulations, by submitting four revised plans with the stamp of a Professional Engineer who no longer worked at his company and who did not draft or affix his seal to said plans. Mr. Lavoie paid a fine of two thousand (\$2,000.00) dollars.

12. Executive Director Kathleen McNally reminded the Board that an exchange of documentation between DOL and Virtual Inc./PCS regarding the proposed conversion of the State Specific Jurisprudence (JP) exam from paper and pencil to a computer-based testing (CBT) format had occurred and is currently under review by Legal with the expectation of more movement on this topic in the coming months.

Chairman Paul Tyrell stated that there may be other possible entities that can be engaged should discussions with Virtual Inc./PCS ultimately not pan out. The Board was notified that the agency is required to abide by the public bidding process if it should seek additional vendors.

13. Joyce Hastings gave the Board a report on the seven (7) land surveyor applicant interviews that were conducted by the Oral Exam/Interview Committee on February 6, 2024. She informed the Board that of the seven (7) candidates, four (4) were approved to move forward to examination and three (3) would be notified of the areas they will need to address before being eligible for another oral exam/interview. The full breakdown is as follows:

- **Applicant 1026011:** Committee recommends this applicant be approved to take the Principles and Practices exam and the State Specific Jurisprudence (JP) exam.
- **Applicant 1028437:** Committee found that the applicant failed to demonstrate an adequate understanding of the Massachusetts Principles and Practices of Surveying as well as the Massachusetts Rules of Evidence. The Board recommends at least 2 years of boundary survey work under a MA PLS; taking a class such as the UMO class on Legal Principles and Practices of Surveying; and taking a class such as the Franklin Cummings Institute class on the MA Statutes and Regulations.
- **Applicant 1030596:** Committee recommends this applicant be approved to take the Principles and Practices exam and the State Specific Jurisprudence (JP) exam.
- **Applicant 1031046:** Committee recommends this applicant be approved to take the State Specific Jurisprudence (JP) exam.
- **Applicant 1031216:** Committee recommends this applicant be approved to take the Principles and Practices exam and the State Specific Jurisprudence (JP) exam.
- **Applicant 1031365:** Committee found that the applicant was lacking in pure boundary survey work. The Board recommends applicant have six (6) solid months of boundary work and provide at least three (3) more samples if his boundary work experience.
- **Applicant 1032312:** Committee found that the applicant failed to demonstrate an adequate understanding of the Massachusetts Principles and Practices of Surveying. The Board recommends that the applicant take at least two (2) courses in MA Principles and Practices of Surveying and demonstrate at least six (6) solid months of boundary work and study.

Dan Caron moved, seconded by Ed Englander, to accept the committee's recommendations. Motion passed unanimously with a vote of 8-0. Members in Favor: Joyce Hastings, Paul Tsang, Dan Caron, Nancy Gould, Edward Englander, Paul Tyrell, Kenneth Anderson, and Ronald Willey. Members opposed: None.

14. Chairman Paul Tyrell presented the application review report provided by Eric Funk for Board consideration. Ed Englander moved, seconded by Dan Caron, to accept the report and ratify the application approvals. Motion passed unanimously with a vote of 8-0. Members in Favor: Joyce Hastings, Paul Tsang, Dan Caron, Nancy Gould, Edward Englander, Paul Tyrell, Kenneth Anderson, and Ronald Willey. Members opposed: None.

15. Chairman Paul Tyrell gave a brief overview of the email from Joshua Twitty, NCEES, dated February 15, 2024, regarding American Legislative Exchange Council's (ALEC) Labor Policy -2nd Edition.

Chairman Paul Tyrell stated that the email was informative as there was no underlying request for response made.

16. At 10:02AM, Kenneth Anderson moved, seconded by Ed Englander, to end the Open Session of the meeting and enter Closed Investigative Conference pursuant to G.L. c. 112, § 65C.

Motion passed unanimously with a vote of 8-0. Members in Favor: Joyce Hastings, Paul Tsang, Dan Caron, Nancy Gould, Edward Englander, Paul Tyrell, Kenneth Anderson, and Ronald Willey. Members opposed: None.

Report of actions taken during closed investigate conference:

- 2023-000515-IT-ENF: Dismiss
- 2022-001139-IT-ENF: Dismiss with Advisory
- 2022-001118-IT-ENF: Dismiss (Nancy Gould recused)
- 2023-000393-IT-ENF: Refer to Prosecutions (Ken Anderson recused)
- 2023-000424-IT-ENF: Refer to Prosecutions (Ken Anderson recused)
- 2023-000592-IT-ENF: Refer to Prosecutions (Ken Anderson recused)
- 2023-000242-IT-ENF: Tabled for further review (Ken Anderson recused)
- 2023-000608-IT-ENF: Return to Investigations
- 2023-000294-IT-ENF: Return to Investigations (Dan Caron recused)

17. At 11:14AM, Kenneth Anderson moved, seconded by Joyce Hastings to exit closed session and adjourn the meeting. Motion passed unanimously with a vote of 8-0. Members in Favor: Joyce Hastings, Paul Tsang, Dan Caron, Nancy Gould, Edward Englander, Paul Tyrell, Kenneth Anderson, and Ronald Willey. Members opposed: None.

Respectfully submitted by,

Eric Funk
Board Administrator

Documents used at the public meeting:

- Agenda for February 22, 2024 Meeting
- Document regarding Additional Requirements for Registered Land Documents
- Email regarding Transitioning PLS State specific exam to Computer Based testing
- Email from Joshua Twitty, NCEES, dated February 15, 2024, regarding American Legislative Exchange Council's (ALEC) Labor Policy -2nd Edition and attachment.