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OCCUPATIONAL LICENSURE

Minutes of the October 26, 2023 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
Azu Etoniru, PE, PLS
Erin Joyce, PE
Daniel Caron, PE
Kenneth Anderson, PLS
Nancy Gould, PE
Paul Tsang, PE
Shannon Slaughter, Public Member
Joyce Hastings, PLS

Board Members Absent

Members of the Public Present

Abbie Goodman, TECET
Ardian Rrapi, PLS Licensure Applicant
Richard Levasseur

Division Staff Members Present at Various Times during the Meeting:

Kathleen McNally, Executive Director of
Various Boards
Jenna Hentoff, Board Counsel
Patricia LaFore, Board Counsel
Mary Pixley, Prosecuting Counsel
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, Azu Etoniru motioned, seconded by Ronald Willey, to open the meeting. Motion passed unanimously with a vote of 8-0. Members in Favor: Nancy Gould, Paul Tyrell, Dan Caron, Azu Etoniru, Ronald Willey, Kenneth Anderson, Shannon Slaughter, and Paul Tsang. Members opposed: None.
3. The Board reviewed the minutes of the September 28, 2023 Open Meeting. Azu Etoniru moved, seconded by Ronald Willey, to accept the minutes as written. Motion passed with a vote of 6-0-2. Members in Favor: Nancy Gould, Paul Tyrell, Azu Etoniru, Ronald Willey, Kenneth Anderson, and Paul Tsang. Members opposed: None. Members abstained: Dan Caron and Shannon Slaughter.
4. With the ongoing service changes impacting both the MBTA Red and Green lines, Chairman Paul Tyrell's safety item focused on how such changes can affect daily routine and the importance of remaining present and aware of our surroundings when commuting.
5. Joyce Hastings joined the meeting at 9:04AM.
6. Chairman Paul Tyrell informed the Board that the next meeting was scheduled to be held on November 16, 2023. No conflicts were noted.
7. Erin Joyce joined the meeting at 9:06AM.
8. Chairman Paul Tyrell took a few moments to acknowledge the recent passing of former Board member Maurice Pilette, noting his unique life, strong familial bonds, and vast contributions to the Board over the many years he served.
9. Chairman Paul Tyrell also took a moment to recognize Vice Chairman Ronald Willey's recent retirement from teaching at Northeastern University after forty (40) years. He offered his congratulations and stated that it was a wonderful ceremony.
10. Executive Director Kathleen McNally advised the Board that there was no new update from senior management regarding the proposed conversion of the State Specific Jurisprudence (JP) exam from paper and pencil to a computer-based testing (CBT) format. She stated that she would continue to push for agency movement on this matter.
11. Board Counsel Patricia LaFore advised the Board that the "Professional Practice: A Guide to the Practice of Architecture, Engineering, and Land Surveying in Massachusetts" ("Guide") received agency approval and has been posted to the Board's website. She further stated that the Guide would also be posted to the Architect Board website.
12. Board Counsel Patricia LaFore informed the Board that the draft language for Continuing Professional Competency (CPC) regulations remains under review. She stated that Board Counsel Jenna Hentoff has been working with Deputy General Counsel Kristina Gasson to respond to questions received from the Governor's Legal Office.

Chairman Paul Tyrell mentioned that there is a great deal of historical information available for review that outlines the impetus behind the Board's request for CPC regulations and encouraged Board Counsel Patricia LaFore to reach out to the Board with any questions.

Board Counsel Jenna Hentoff stated that she was reviewing all previous Board meeting minutes pertaining to CPC regulatory discussions and compiling the information to be included with their response which will also include a survey of how surrounding states address the issue of CPC.

Chairman Paul Tyrell recognized Abbie Goodman who wished to provide information on this topic. Ms. Goodman stated that she had recently communicated with Legal Counsel at the

Executive Office of Administration and Finance (A&F) and she would forward their email exchange to Board staff. She further stated that she provided A&F with a tracking map showing CPC regulatory requirements in addition to a source she found which outlines professional development hour (PDH) requirements from around the country.

13. Board Counsel Patricia LaFore informed the Board that there were no further legal topics for discussion.
14. Executive Director Kathleen McNally informed the Board that the revised and updated complaint tracking spreadsheet was still undergoing review and updating with the hope that a current version would be available before the end of the year.

She also informed the Board that a comprehensive review of the NCEES Enforcement Exchange was underway to ensure that all disciplinary actions and dispositions taken by the Board have been reported and uploaded to the individual's NCEES Enforcement record.

15. Chairman Paul Tyrell asked if there were any application questions from the Board. The Board did not indicate any application questions; however, Kenneth Anderson asked if there would be any upcoming dates for oral exams/interviews for Land Surveyor applicants.

Eric Funk informed Kenneth Anderson and the other members of the Land Surveyor Interview subcommittee that there were several applicants who could be scheduled for their required oral exam/interview and that he would be contacting each of them in the next few days to assess their availability over the coming weeks.

16. Chairman Paul Tyrell inquired about the status of in-person meetings for the remainder of the year. After a brief discussion, it was determined that the November and December 2023 meeting would be held virtually with the understanding that meetings in 2024 would be held as hybrid with at least a quorum of the Board attending in person.
17. Chairman Paul Tyrell presented the application review report provided by Eric Funk for Board consideration. Ronald Willey moved, seconded by Azu Etoniru, to accept the report and ratify the application approvals. Motion passed unanimously with a vote of 10-0. Members in Favor: Nancy Gould, Joyce Hastings, Paul Tyrell, Dan Caron, Azu Etoniru, Ronald Willey, Erin Joyce, Kenneth Anderson, Shannon Slaughter, and Paul Tsang. Members opposed: None.
18. Joyce Hastings was recused from the following discussion.
19. Chairman Paul Tyrell welcomed Ardian Rrapi back before the Board for further review and discussion of his application for Board approval to take the NCEES Principles and Practices of Surveying (PS) exam and the State Specific Jurisprudence (JP) exam.

Chairman Paul Tyrell acknowledged that Mr. Rrapi's application was previously discussed at a meeting several months prior, at which time, the Board requested additional time to retrieve and review a complaint involving Mr. Rrapi from 2014/2015. He then provided the Board with a summation of the previous complaint matter in question so as to provide the necessary clarity and allow the Board to make their final assessment of the application.

After a brief discussion, Ronald Willey moved, seconded by Dan Caron, to approve Mr. Rrapi's application to move forward and allow him to take the NCEES Principles and Practices of Surveying (PS) exam and the State Specific Jurisprudence (JP) exam. Motion passed with a vote of 9-0-1. Members in Favor: Nancy Gould, Paul Tyrell, Dan Caron, Azu Etoniru, Ronald Willey, Erin Joyce, Kenneth Anderson, Shannon Slaughter, and Paul Tsang. Members opposed: None. Members recused: Joyce Hastings.

20. Chairman Paul Tyrell provided the Board with an email from Kris Carris, Retrieve Technologies, dated October 16, 2023, regarding the legal requirements for performing Data Prep Services.

Erin Joyce and Kenneth Anderson stated that after review, they understood the inquiry to be regarding the use of data provided by a licensed professional for use in a program that creates machine control/3D modeling for construction.

Chairman Paul Tyrell stated that he viewed data prep services similar to how surveyors utilize Lidar and photogrammetry. He added that the practice of engineering and surveying is clearly defined in the Board's statutes and regulations.

Azu Etoniru pointed out that the email was also a classroom component related to how this subject matter should be taught to civil engineering students. He stated that per the email, Mr. Carris viewed data preparation to be the practice of land surveying.

Kenneth Anderson added that any initial data collection should be performed by a licensed individual who would then supply the data to whomever would be utilizing it to perform machine control or 3D modeling.

Dan Caron stated that for the creation of a classroom program, they need to be clear on what the Board's statutes and regulations are pertaining to the practice of engineering vs. the practice of surveying and specifically, the areas of practice that are strictly surveying and those areas that a civil engineer can perform. He referenced the chart that was posted on the Board's website earlier this year which addresses these topics in detail.

Chairman Paul Tyrell stated that he would draft a response for review by Board Counsel.

21. Chairman Paul Tyrell provided the Board with an email from Wade Amos, P.E., dated October 16, 2023, regarding what constitutes practicing without a license.

Dan Caron stated that Massachusetts does not require a firm to be licensed unlike other states such as North Carolina.

Chairman Paul Tyrell agreed that the Massachusetts Board licenses individuals, not firms; however, firms are still required to be registered with the Secretary of State's office to provide engineering or surveying services.

Dan Caron informed the Board that while he is duly licensed to practice engineering in West Virginia, because his firm is not licensed in that state, he cannot offer to practice engineering there. He further added that his firm cannot even look at an RFP (request for proposal) involving work in West Virginia because they are not licensed to do business there.

Board Counsel Jenna Hentoff reminded the Board that M.G.L. Chapter 112, Section 81D defines the practice of engineering and land surveying which includes the offer to practice such services. She further stated that an individual is prohibited from soliciting for such services unless they are duly licensed in Massachusetts.

Chairman Paul Tyrell noted that Mr. Amos has asked that the Board clarify that an "engineering study" is considered an Instrument of Services, and therefore, requires a licensed P.E. He stated that while he believes that the use of the term "engineering" should indicate the need for a licensed P.E. to perform such a study, the signing/stamping of such a document is irrelevant as the approving authority requires a stamp so that they are assured that whoever prepared such a document meets minimum competency requirements to hold such a license.

Board Counsel Jenna Hentoff advised the Board that the regulations indicate that an Instrument of Service must be stamped if it is to be filed with a public authority.

Dan Caron stated that he would draft a response for review by Board Counsel.

22. Chairman Paul Tyrell provided the Board with an email from D. Matthew Stuart, P.E., S.E., dated October 11, 2023, regarding the signing and sealing of documents.

Kenneth Anderson gave an overview of the questionnaire that was provided by Mr. Stuart seeking Board response.

Chairman Paul Tyrell indicated that the questions Mr. Stuart is seeking answers for are in many cases judgement calls by the licensed professional. He further stated that the Board's regulations indicate that an Instrument of Service must be stamped if it is to be filed with a public authority.

Board Counsel Jenna Hentoff and Chairman Paul Tyrell stated that many of the questions are addressed in the Board's regulations and the response to Mr. Stuart should indicate that and if he has additional questions, he can reach out to the Board with those inquiries.

23. There were no comments from the public.
24. At 10:04AM, Kenneth Anderson moved, seconded by Azu Etoniru, to end the Open Session and enter Closed Investigative Conference pursuant to G.L. c. 112, § 65C. Motion passed unanimously with a vote of 10-0. Members in Favor: Nancy Gould, Joyce Hastings, Paul Tyrell, Dan Caron, Azu Etoniru, Ronald Willey, Erin Joyce, Kenneth Anderson, Shannon Slaughter, and Paul Tsang. Members opposed: None.

Executive Director Kathleen McNally acknowledged that recording of the Open Session of the meeting had ended.

25. At 10:33AM, Azu Etoniru moved, seconded by Kenneth Anderson to exit closed session and adjourn the meeting. Motion passed unanimously with a vote of 8-0. Members in Favor: Nancy Gould, Joyce Hastings, Dan Caron, Azu Etoniru, Ronald Willey, Kenneth Anderson, Shannon Slaughter, and Paul Tsang. Members opposed: None.

Respectfully submitted by,

Eric Funk
Board Administrator

Documents used at the public meeting:

- Agenda for October 26, 2023 Meeting
- Draft Minutes of September 28, 2023 Open Meeting
- Ardian Rrapi application documents
- Email from Kris Carris, Retrieve Technologies, dated October 16, 2023, regarding the legal requirements for performing Data Prep Services.
- Email from Wade Amos, P.E., dated October 16, 2023, regarding what constitutes practicing without a license.
- Email D. Matthew Stuart, P.E., S.E., dated October 11, 2023, regarding the signing and sealing of documents.