

MINUTES OF THE REGULAR MEETING OF THE OHIO STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS

Tuesday April 29, 2014

Members Present:

Bert Dawson, P.E., P.S.	Vice Chair
Dean C. Ringle, P.E., P.S.	Secretary
David L. Cox, P.S.	Member
James D. Mawhorr, P.E., P.S.	Member

Staff Present

John F. Greenhalge	Executive Director
Amanda Ault	Assistant Executive Director
Jason P. McLean	Enforcement Supervisor
Joel Mick	Investigator
Rachel Huston	Assistant Attorney General

CALL TO ORDER

The State Board of Registration for Professional Engineers and Surveyors held its regular meeting on Tuesday April 29, 2014 at 50 West Broad Street, Suite 1820, Columbus, Ohio 43215 in the Board conference room. Vice Chair Bert Dawson called the meeting to order at 10:00 a.m.

1. CONSENT AGENDA

A. Investigations Report- Consent Items

Motion by Mr. Ringle, second by Mr. Mawhorr, to approve the consent agenda. Motion carried.

Professional Engineer _____ Case No. 2010-046

On January 11, 2010 the Board received a complaint alleging SUBJECT's design of a theater located at Kent State University contained serious errors and deficiencies. Specifically, the allegations stated there were serious design issues relative to lateral load paths, lateral bracing for beams subjected to torsion and lateral bracing for the compression flange of beams. Attached to the complaint was a peer review report that was compiled by professional engineers after a portion of the theater collapsed during construction.

On March 9, 2010 Board staff mailed a letter to SUBJECT requesting a written response to the complaint, to include plans, design notes, calculation sheets, drafts for the project and all correspondence related to the project. On April 30, 2010 SUBJECT submitted his written response and the entire project file for the Board's review.

The Board had independent structural engineers review the complaint. On July 20, 2013 the Board received the consultant's report, which concurred with the peer review engineers in that SUBJECT's structural designs related to the complaint contained serious errors and deficiencies.

On March 7, 2014 the Board received a signed settlement agreement wherein SUBJECT agreed to a two (2) year probation, pay a \$3000.00 fine, submit a quality assurance plan for peer review, obey all laws and rules, and be reprimanded.

Move to approve the settlement agreement and close the investigation.

ACTION: The motion passed as part of the consent agenda.

Professional Surveyor _____ Case No. 2012-085

On March 29, 2012 the Board received a complaint alleging that SUBJECT failed to meet the minimum standards for mortgage location surveys (MLS) by failing to perform proper research and investigation and thereby not locating and documenting a brick wall encroachment. Specifically the complainant stated that in February 2012, a complaint was filed in the matter with Mahoning County Common Pleas Court (Case No. 2012-CV-0488) regarding SUBJECT's alleged error. The complainant indicated concerns of negligence, negligent misrepresentation, and fraud in relation to the purchase of real property wherein the encroachment had not been disclosed. According to the complainant, SUBJECT performed another MLS for the property in 2012 after the adjacent property owner had a full boundary survey performed and the issue regarding the encroachment was discovered and brought to SUBJECT's attention.

According to documentation in the board's possession, SUBJECT was subject to previous complaints and was disciplined by this Board in 2001 for failing to meet the minimum standards for a MLS. SUBJECT received a formal written reprimand at that time.

On March 6, 2013 a professional surveying consultant used by the Board's enforcement staff returned a report regarding his review of the entire case file. The consultant's report indicated he agreed with the complainant that the mortgage survey performed February 20, 2010 by SUBJECT did not meet the minimum standards for MLS in the State of Ohio, as it did not show the encroachment of the wall. The consultant found eight (8) other possible violations of A.C. 4733-38 during his review of the complaint and surveying documentation provided.

The consultant found that most of the deficiencies on the February 20, 2010 survey were corrected on the February 10, 2012 mortgage survey; the exception was still no measurement of distance from a major improvement.

On February 18, 2014 the Board received a signed settlement agreement wherein SUBJECT agreed to a three (3) year stayed suspension and pay a \$3000.00 fine.

Move to approve the settlement agreement and close the investigation.

ACTION: The motion passed as part of the consent agenda.

Professional Engineer _____ Case No. 2014-016

On June 24, 2013 SUBJECT reported additional disciplinary actions in the States of Kansas and Missouri. SUBJECT previously reported to the Ohio Board that he was on probation in the States of Missouri and Kansas after a 2010 Missouri disciplinary action due to SUBJECT illegally practicing architecture that resulted in a settlement agreement and five (5) years' probation with conditions. The Kansas Board took reciprocal action by placing SUBJECT on probation to run concurrent with the State of Missouri's probation with the same conditions for the five (5) years.

The original Missouri Board's order placing SUBJECT on probation for five (5) years listed the following conditions:

- Shall timely renew license, pay all fees and comply with all requirements necessary to maintain licensure. SUBJECT shall comply with all provisions, rules, and regulations of the Board; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.
- IF SUBJECT violates any of the above terms then the Missouri Board after an evidentiary hearing can vacate/set aside the herein discipline and may suspend, revoke or otherwise discipline SUBJECT's license as a professional engineer.

On July 7, 2012 the Kansas State Board of Technical Professions rendered a final order imposing discipline on SUBJECT due to his preparation of fire protection documents which were deficient and contained numerous life safety issues. As a result of SUBJECT's actions, the Kansas Board ordered SUBJECT to be placed on probation for a period of two (2) years, pay fees, expenses and a fine amounting to \$25,000.00.

As a result of the second disciplinary action taken against SUBJECT in Kansas for his signing and sealing fire protection documents, which were deficient and contained numerous life safety issues, the Missouri Board filed a probation violation complaint. After a hearing of the matter, the Missouri Board subsequently revoked SUBJECT's professional engineer's license on May 30, 2013.

On December 26, 2013 the Board received notice that after SUBJECT appealed the Missouri revocation, and the State of Missouri Court of Appeals remanded the case back to the Missouri Board to provide another hearing to SUBJECT due to service related issues. The hearing was conducted on January 28, 2014.

On February 24, 2014 the Board received a copy of the Missouri Board's final order wherein SUBJECT's PE registration was revoked again; however, this order stayed SUBJECT's revocation and placed him on five (5) years' probation.

On April 17, 2014 the Board received a settlement agreement wherein SUBJECT agreed to accept five (5) years' probation, to run concurrent with the Missouri Board's order, and receive a reprimand.

Move to accept the settlement agreement and close the investigation.

ACTION: The motion passed as part of the consent agenda.

Professional Engineer Case No. 2011-046

On February 11, 2014 Board staff interviewed SUBJECT regarding allegations he had provided engineering services in the state of Ohio at a time when his registration was inactive. Based on SUBJECT's responses and description of his firm's duties under a larger corporation, it was determined that SUBJECT had been providing engineering services at a time when his registration with this Board had expired.

SUBJECT provided Board staff with a list of fourteen (14) engineering projects he performed while his Ohio PE registration was expired.

On April 3, 2014 the Board received a settlement agreement wherein SUBJECT would pay a two-thousand dollar \$2000.00 fine and receive a public reprimand.

Move to open investigation, accept settlement agreement, and close investigation.

ACTION: The motion passed as part of the consent agenda.

Engineering Firm Case No 2014-028

On October 28, 2014 the Board obtained information indicating SUBJECT FIRM appeared to have provided engineering services in Ohio prior to obtaining a certificate of authorization.

The owner of SUBJECT FIRM received disciplinary action by this Board previously for unlicensed practice.

An investigation of this matter determined SUBJECT FIRM offered and provided engineering services on nine (9) projects in Ohio at a time when SUBJECT FIRM did not have a certificate of authorization with this Board.

On April 14, 2014, the Board staff received a settlement agreement wherein SUBJECT FIRM agreed to pay a three-thousand dollar (\$3,000) fine, and receive a public reprimand.

Move to open investigation, approve settlement agreement, and close investigation.

ACTION: The motion passed as part of the consent agenda.

Unlicensed Firm Case No. 2014-047

On November 26, 2013 the Board received a complaint alleging SUBJECT FIRM offered and provided engineering services while the firm's certificate of authorization (COA) was expired.

The Board's investigation revealed that SUBJECT FIRM provided engineering services on seventeen (17) projects in Ohio while the firm's COA was expired.

On April 15, 2014 the Board received a Settlement Agreement wherein SUBJECT FIRM agreed to receive a one-thousand dollar (\$1,000.00) fine and received a public reprimand.

Move to open investigation, accept settlement agreement, and close investigation.

ACTION: The motion passed as part of the consent agenda.

Unlicensed Firm Case No. 2013-049

On April 1, 2013 the Board received a complaint alleging SUBJECT FIRM was offering engineering services in Ohio without a certificate of authorization (COA). Included with the complaint were re-bid documents regarding HVAC and building upgrades to be performed on a Seneca County Administration Building. On April 11, 2013 Board staff requested SUBJECT FIRM submit a response to the complaint.

On May 14, 2013 the Board received SUBJECT FIRM'S response via their attorney. The attorney stated SUBJECT FIRM is exempt from registering with this Board because the project involves replacement equipment and systems only. The attorney explained SUBJECT FIRM is providing energy conservation consulting through assessing the efficiency or inefficiency of the buildings HVAC units and other energy consuming systems/controls. According to the attorney SUBJECT FIRM's services are a separate profession and distinct from professional engineering.

On September 5, 2013 the Board staff requested that a Board consultant review the complaint and services provided by SUBJECT FIRM. The consultant's report was received on September 20, 2013. The consultant believed that SUBJECT FIRM is in violation of Ohio's engineering laws because SUBJECT FIRM clearly redesigns non-similar equipment against the R.C.'s stipulation that a designer may prepare drawings that are "...similar in type or capacity to the equipment or systems being replaced..."

On October 15, 2013 the Board determined the project to be the practice of engineering and the firm was not exempt from requiring a COA.

On March 14, 2014 SUBJECT FIRM applied for a COA to provide engineering services in Ohio and has complied with Ohio law.

Move to close Investigation.

ACTION: The motion passed as part of the consent agenda.

Scott A. Horan Case No. 2014-035

On February 18, 2014 the Board voted to prohibit Mr. Horan from taking the NCEES Principles and Practice of Surveying (PS) examination and the Ohio state-specific surveying examinations before April 2015. The Board's decision was based on the invalidation of Mr. Horan's exam scores for Horan's actions that violated R.C. 4733.20 (A) (1).

Move to close the investigation.

ACTION: The motion passed as part of the consent agenda.

Professional Engineer/Surveyor Case No. 2014-064

On January 8, 2014 the Board received a complaint alleging SUBJECT removed a stone that was utilized as a corner monument to determine the boundary of a property.

The investigation determined the SUBJECT removed a stone from the client's property, which had previously been displaced from the original property corner, and laid discarded on the client's property for an unknown amount of years. Subsequent interviews confirmed the client/property owner knew of the discarded stone, corroborated the location of the stone, and confirmed he had authorized the SUBJECT to remove the stone from the property.

Additionally, the SUBJECT placed a pin in accordance with Ohio law at the proper corner location where the discarded stone most likely was originally set.

Additional investigation found SUBJECT's firm, which was a sole proprietorship, did not possess a Certificate of Authorization with this Board to offer and provide engineering or surveying services.

Move to close the case and approve the Certificate of Authorization.

ACTION: The motion passed as part of the consent agenda.

2. APPROVAL OF MINUTES

The minutes of the February 18, 2014 Board meeting were presented for approval.

***Motion by Mr. Ringle, second by Mr. Cox, to approve the February 18, 2014 meeting minutes.
Motion carried.***

3. RECOGNITION OF GUESTS AND PUBLIC COMMENTS

Melinda Gilpin, Professional Land Surveyors of Ohio
Holly Ross, Ohio Society of Professional Engineers

4. BOARD REVIEW OF APPLICATIONS

Chad E. Abbott- PE Comity Applicant

Abbott graduated from North Carolina State University with a Bachelor's of Science in Civil Engineering in December 2005. Abbott took and passed the NCEES Principles and Practice of Engineering (PE) examination in October 2009. From the information provided in his application it appears that Abbott did not complete four years of engineering experience prior to taking and passing the NCEES PE examination.

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete four years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

Sandra L. Long- PE Comity Applicant

Long is applying for registration in Ohio as a professional engineer based on her license in Pennsylvania. Long graduated from Penn State University with a Bachelor's degree in Environmental Engineering Technology in May 1996. The curriculum is not ETAC/ABET accredited. Long became a registered professional engineer in Pennsylvania in January 2002. From the information provided in her application it appears that Long did not complete eight years of engineering experience prior to taking and passing the NCEES PE examination.

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete eight years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

Brian J. Zick- PS Comity Applicant

Zick is applying for registration in Ohio as a professional surveyor based on his license in New York. Zick graduated from Penn State University with a Bachelor's degree in Surveying in May 2000. The curriculum is not ABET accredited. Zick became a registered professional surveyor in New York in January 2007.

The Board directed staff to request that the applicant have his degree evaluated by NCEES Credentials Evaluations. Once the evaluation is received the Board will re-evaluate the application.

Sorin Juster- PE Comity Applicant

Juster graduated from Tel Aviv University, Tel Aviv, Israel with a B.A. in Geodesy in 1980 and a B.S. in Geodetic Engineering in December 1982. These degrees were evaluated by ECEI, a division of ABET, in December 2004. The programs completed did not meet the curricular requirements of ABET in surveying engineering. The programs were 14 hours short in humanities. Juster also graduated from the University of Nebraska with a M.S. in civil engineering in August 1993. Juster took and passed the NCEES Principles and Practice of Engineering (PE) examination in April 1991. From the information provided in his application and on the NCEES record it appears that Juster did not complete four years of engineering experience prior to taking and passing the NCEES PE examination.

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete four years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

Alaa Ali- PE Comity Applicant

Ali graduated from Cairo University- Giza with a Bachelor's of Science in Civil Engineering in July 1987. Ali also graduated from Utah State University with a M.S. in civil and environmental engineering in March 1992 and a Ph.D. in civil and environmental engineering in March 1997. Ali took and passed the NCEES Principles and Practice of Engineering (PE) examination in April 1996. From the information provided in

his application and on his NCEES record Ali did not provide evidence that he completed four years of engineering experience prior to taking and passing the NCEES PE examination.

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete four years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

William R. Ritzer- PE Comity Applicant

Ritzer is applying for registration as a professional engineer based on his registration in Texas. On his Ohio application Ritzer reported that he was convicted of solicitation of prostitution in 1994. He reported that he completed all court ordered requirements without further incident.

Motion by Mr. Ringle, second by Mr. Cox, to approve the application. Motion carried.

Melanie K. Johnson- PE Comity Applicant

Johnson graduated from Purdue University with a Bachelor's of Science in Civil Engineering in May 2004. Johnson took and passed the NCEES Principles and Practice of Engineering (PE) examination in April 2008. From the information provided in her application and in her NCEES record it appears that Johnson did not complete four years of engineering experience prior to taking and passing the NCEES PE examination.

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete four years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

Enrique J. Morales- PE Comity Applicant

Morales graduated from the University of Puerto Rico with a Bachelor's of Science in Civil Engineering in June 1996. Morales took and passed the NCEES Principles and Practice of Engineering (PE) examination in October 1997. From the information provided in his application and on his NCEES record it appears that Morales did not complete four years of engineering experience prior to taking and passing the NCEES PE examination.

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete four years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

Tao Yang- FE Exam Applicant

Yang is applying to take the NCEES Fundamentals of Engineering examination. Yang graduated from Tsinghua University with a Bachelor of Engineering in Automation in July 2005. Yang earned a Ph.D. in electrical and computer engineering in May 2011. Yang had his undergraduate degree evaluated by

NCEES Credentials Evaluations, which found that the undergraduate degree did not meet the NCEES Education Standard since Yang did not complete a course in general chemistry.

Motion by Mr. Mawhorr, second by Mr. Ringle, to approve the application. Motion carried.

Charles Douglas Graham- PS Comity Applicant

Graham is applying for registration in Ohio as a professional surveyor. Graham has not graduated from and ABET accredited or Board-approved surveying curriculum of four years or more as required by R.C. 4733.11. Executive Director Greenhalge had a former Board member evaluate his application in August 2013 and provided the evaluation to Graham. Carol Morman of Cincinnati State has submitted a letter to the Board suggesting additional coursework for Graham to meet the requirements of R.C. 4733.11.

The Board reviewed the letter from Ms. Morman and directed the staff to advise Mr. Graham that completing CET 267 would complete the education requirement.

Gary Neffenger - PE Reinstatement

Mr. Neffenger's professional engineer license expired on December 31, 2011. He is requesting Board approval to reinstate his PE license. Mr. Neffenger submitted continuing professional development hours from a conference he attended in January 2013. The conference was titled *2013 Claims Conference* and was hosted by NCA Group. Mr. Neffenger submitted a letter to the Board along with the conference agenda. Neffenger is requesting that the Board accept the conference hours toward his continuing education requirement and reinstate his professional engineer license.

At its meeting on January 21, 2014 the Board requested additional information on the courses and certificates of completion.

The Board reviewed the information submitted by Mr. Neffenger. The courses seem to be focused towards individuals who work in insurance claims and adjusting. There appears to be little, if any, coursework related to technical, ethical or managerial topics relevant to the practice of engineering. The Board will have the courses evaluated by another engineer that works in the field of forensic engineering to determine if any of the coursework should be accepted.

Agcompliance- Change to COA

Agcompliance, based in Edmond, OK, has requested Board approval to add Mark D. Tatarian, P.E., as the individual designated in responsible charge of engineering activities and decisions for the firm. Tatarian also maintains his own company in which he provides engineering services to architectural firms. He has no employees in his personal business. Board staff requested an explanation of Tatarian's responsibilities with both firms.

Motion by Mr. Cox, second by Mr. Ringle, to approve the certificate of authorization.

The Board directed the staff to send a letter to Tatarian outlining Ohio's laws and rules pertaining to overseeing engineering work in Ohio and place the firm on the audit list.

David E Beachy- Comity Applicant

Beachy is applying for registration in Ohio as a professional engineer based on his license in Pennsylvania. Beachy graduated from the University of Pittsburgh at Johnstown with a Bachelor's degree in Civil Engineering Technology in April 1987. The curriculum is ETAC/ABET accredited. Based on the information provided in Beachy's NCEES record it appears that he only completed 7 years 1 month of engineering experience prior to taking and passing the NCEES PE examination. Ohio law requires technology graduates to complete eight years of experience prior to taking and passing the NCEES PE examination.

On January 14, 2014 a letter was sent to Beachy advising him that it appeared that his application was incomplete. Beachy submitted additional information indicating that he had completed coop experience prior to graduation that he would like the Board to consider. Beachy worked as a field inspector for the Pennsylvania Department of Transportation from April 22, 1985 to August 30, 1985 and April 21, 1986 to August 29, 1986- an additional eight months of experience. Beachy also has listed the following engineering experience:

July 1987 to April 1994- EADS Group, Somerset, PA 6 years, 10 months post-graduation/pre-exam

The Board reviewed the application and determined that the application was incomplete since the applicant did not complete eight years of engineering experience prior to taking and passing the NCEES PE examination in accordance with Ohio Revised Code Section 4733.11 and Ohio Administrative Code section 4733-29-01.

5. APPROVAL OF CREDENTIALS REVIEW COMMITTEE REPORTS

The Credentials Review Committee (CRC) Report of April 28, 2014 was presented for approval.

Motion by Mr. Mawhorr, second by Mr. Cox, to approve the Credentials Review Committee Report of April 28, 2014. Motion carried.

6. RATIFICATION OF REGISTRATIONS ISSUED

The Board reviewed the registrations issued since the last Board meeting. The names and registration numbers of all approved applicants since the last meeting were presented on paper and electronic media.

Motion by Mr. Ringle, second by Mr. Cox, to approve the registrations issued since the last meeting. Motion carried.

7. EXAMINATIONS

A. October 2014 Exam Schedule

The Board reviewed the October 2014 exam schedule.

***Motion by Mr. Ringle, second by Mr. Mawhorr, to approve the October 2014 exam schedule.
Motion carried.***

B. April 2014 Exam

The NCEES Principles and Practice examinations were held on Friday, April 11, 2014 in Columbus, Cleveland and Cincinnati. Mr. Greenhalge observed the Cleveland site, Jason McLean observed the Columbus site and Amanda Ault observed the Cincinnati site. There were no incidents to report.

C. Ohio PS Exam Workshop

The Ohio PS exam workshop is scheduled for Saturday May 3, 2014 from 8:00 a.m. to 4:30 p.m. at the Marriott Hotel in Dublin, Ohio.

8. REPORTS

A. Executive Director's Report

a) NCEES

The NCEES Central Zone meeting will be held May 15-17 in Lincoln, Nebraska. Mr. Ringle, Mr. Greenhalge and Ms. Ault are scheduled to attend. Mr. Ringle and Mr. Greenhalge are funded delegates paid for by NCEES.

The NCEES annual meeting will be held August 20-23, 2014 in Seattle WA. NCEES will fund two voting delegates from each board, as well as new board members appointed within the past 24 months that have never attended an annual meeting. Funded delegates must be designated by May 30, 2014.

b) Financial Disclosures

Mr. Greenhalge reported that the deadline for filing financial disclosure forms with the Ohio Ethics Commission was extended to May 15, 2014. All Board members and the Executive Director must annually file a financial disclosure form with the commission. The Board will pay the filing fee.

c) Personnel Update

On April 16, 2014 Mr. Greenhalge, Ms. Ault and Mr. McLean interviewed five applicants for the Program Administrator 1 position. Lisa Dodge was selected for the position and will begin on Monday May 5, 2014.

d) COA Renewals

On March 4, 2014 Governor Kasich signed HB 202. The law takes effect on June 4, 2014. The law will change the COA renewal from annual to biennial. The following change was made to R.C. 4733.15:

(B) Each certificate of authorization issued pursuant to section 4733.16 of the Revised Code shall authorize the holder to provide professional engineering or professional

surveying services, through the registered professional engineer or professional surveyor designated as being in responsible charge of the professional engineering or professional surveying practice, from the date of issuance until the last second immediately succeeding thirtieth day of June ~~next succeeding the date upon which the certificate was issued~~, unless the certificate has been revoked or suspended for cause as provided in section 4733.20 of the Revised Code or has been suspended pursuant to section 3123.47 of the Revised Code. Thereafter, the certificate shall expire biennially on the thirtieth day of June.

Although the law does not go into effect until June 2014, the staff is recommending sending the biennial renewal notices in late April/early May reflecting the \$50.00 biennial renewal fee.

The Board directed the staff to send the renewal notices reflecting the biennial renewal since the law will become effected before the application deadline.

e) Personal Services Contract

Mr. Greenhalge requested Board approval to enter into a personal services agreement with Franklin Snyder, Jr., P.S. not to exceed \$4,000.00 to provide assistance with exam evaluation and to assist the Board's investigative staff in investigations.

Motion by Mr. Ringle, second by Mr. Cox, to approve the personal services contract. Motion carried.

B. Legislative Report

- a) H.B. 98 became law on November 15, 2013. Mr. Greenhalge distributed a summary of the staff's review of the requirements in H.B. 98 and Executive Order 2013-05K. (ATTACHMENT A)

The Board reviewed the staff's recommendation and concurred.

Motion by Mr. Cox, second by Mr. Mawhorr, to accept the staff's recommendation and to grant the Executive Director the authority to waive the renewal fees and continuing professional development requirements for individuals that provide proof that they are serving on active duty in any branch of the United States armed forces defined in R.C. 4733.15 and for any registrant that did not renew the license because the registrant's spouse served in those armed forces on active duty and the service resulted in the registrant's absence from Ohio. Motion carried.

- b) Mr. Greenhalge reported that H.B. 202 was signed by Governor Kasich on March 4, 2014 and will take effect June 4, 2014.
- c) Mr. Greenhalge reported that H.B. 379 is currently in the House Commerce, Labor and Technology Committee. The bill would give immunity to professional engineers, professional surveyors and architects who volunteer to provide services during a declared emergency. At its meeting on February 18, 2014 the Board directed Mr. Greenhalge to draft a letter in support of H.B. 379. Mr. Greenhalge will testify in support of the bill when it is scheduled for hearing.

9. ENFORCEMENT

Motion by Mr. Cox, second by Mr. Ringle, to go into Executive Session pursuant to Ohio Revised Code, Section 121.22 (G) (1), to consider complaints against licensees or regulated individuals. Mr. Greenhalge recorded a roll call vote:

Roll call vote:
Mr. Dawson – Yes
Mr. Mawhorr- Yes
Mr. Cox- Yes
Mr. Ringle- Yes

Motion carried. The Board entered into executive session at 11:31 a.m.

Mr. Dawson invited Mr. Greenhalge, Ms. Ault, Ms. Huston, Mr. McLean and Mr. Mick to attend the executive session.

The executive session ended at 12:59 p.m.

ACTIONS TAKEN AS A RESULT OF EXECUTIVE SESSION

A. Review of investigation report- non consent agenda items

Unlicensed Firm _____ Case No. 2012-117

On July 5, 2012 the Board received a complaint alleging an architectural firm (SUBJECT FIRM) sealed electrical and mechanical drawings for a project located in Columbus, Ohio. The complainant indicated that it was a small project, but the complainant, who is a professional engineer, believed the project to be an electrical engineering project with an incidental architectural component.

On March 26, 2012, thirty-two (32) days prior to SUBJECT FIRM'S completion of the above-mentioned plans, the Board, based on a separate complaint, sent a warning letter to SUBJECT FIRM due to allegations of unlicensed practice of engineering.

SUBJECT FIRM was previously registered with this Board to offer and provide engineering services; however, the firm allowed their registration to go inactive in April of 2009 when their professional engineer left the firm.

The Board directed the staff to have the plans reviewed by a Subject Matter Expert.

Unlicensed Firm _____ Case No. 2013-014

On September 11, 2013 the Board received a complaint alleging SUBJECT FIRM was offering and providing engineering services in Ohio. The services offered included arc-flash analysis and calculations.

In response to the complaint, the President of the firm explained that his firm offers arc flash analysis, but they are not an engineering firm. He also stated that he has not provided services for an Ohio firm;

they have only provided a bid on a job for a client. The President requested that the Board indicate why arc flash analysis is considered the practice of engineering.

Motion by Mr. Ringle, second by Mr. Mawhorr, to close the complaint. Motion carried.

The Board directed the staff to send a letter advising the firm that arch flash analysis is the practice of engineering and must be performed by a professional engineer.

Engineering Firms and Professional Engineer Case No's. 2014-002, 2014-003 & 2014-004

On March 12, 2012 the Board received a complaint alleging SUBJECT'S falsely claimed disadvantaged business status on a number of federally-funded transportation projects.

No action taken.

Ohio RCAP (Ohio Rural Community Assistance Program) Case No. 2014-007

On July 31, 2013 the Board received a complaint alleging that Ohio RCAP promoted surveying and mapping for GIS systems to the public. According to the complainant, the agency does not employ any Ohio registered professional surveyors.

According to the website, RCAP has been serving rural communities for over thirty (30) years. Specifically, RCAP provides consulting services to help rural communities address their drinking and waste water treatment needs with field agents that also assist communities with project development and capacity building. Ohio RCAP is part of the Great Lakes RCAP network, and receives funding from a number of federal programs as well as Ohio EPA and the Ohio Water Development Authority to provide technical assistance to communities under 10,000 in population. On the website under *What's New*, an article titled *GIS Cooperative Accepting Members* was found. The article explains that RCAP's GIS Team members have assisted 40 communities with GPS data collection and/or GIS mapping over the last four years. RCAP indicates they now have a core group of utilities that have GIS data to use and maintain, and RCAP has launched a web application intended for local utility staff to enable data editing, line tracing and other features without requiring GIS expertise to use it. According to the website, RCAP is also able to provide basic map services for smart phones and their intentions are to assist communities in mapping their utilities with GIS and GPS technologies. As found on RCAP's website, they are involved in 7 states, to include 12 cities in Ohio.

On January 7, 2014 Board staff sent Ohio RCAP Director John Rauch a letter indicating Ohio RCAP may be engaged in the practicing surveying, in violation of R.C. 4733.02, 4733.16 and 4733.22. The letter requested that Ohio RCAP provide the Board a written response to the allegations.

On January 29, 2014 the Board received RCAP's written response via the law firm Shumaker, Loop & Kendrick, LLP who represents WSOS Community Action Commission, Inc., a non-profit human services and community development agency that administers the RCAP program in Ohio and six other states. The letter further indicates that the service RCAP provides does not violate R.C. Section 4733.01 (F). According to the letter, RCAP's GIS datasets are referential and serve to provide a visual means of organizing and accessing data base information, they are not the legal record of original survey measurements, or do they carry legal authority to determine a boundary or the location of fixed works.

RCAP's attorney stated that RCAP's staff has taken steps to clearly communicate with their participating communities, utilities, and end users they do not perform surveying work. Further the letter stated, the end product cannot be substituted for professional surveys, nor can it substitute for surveying design during design or construction projects.

The Board directed the staff to draft a letter advising RCAP of Ohio's laws and rules pertaining to the practice of surveying.

Engineering and Surveying Firm Case No. 2014-014

On August 29, 2013 the Board received a complaint alleging that an employee of SUBJECT FIRM had contacted complainant, the only PS employed with SUBEJCT FIRM, and requested complainant to perform right of way research on a Water Withdrawal Site project located in Ohio. The Complainant stated he did not have any knowledge of the project, but it appeared someone else had already been involved in surveying portions of the project. The Complainant explained he informed SUBJECT FIRM it was illegal for the firm to be practicing surveying without the direction and supervision of an Ohio licensed professional surveyor.

According to the Board's records, on August 28, 2013 SUBJECT FIRM notified the Board their professional surveyor (Complainant) listed in responsible charge was no longer an employee of the firm. On September 10, 2013 the Board received an email from SUBJECT FIRM explaining they hired a new professional surveyor to be in responsible charge. On September 18, 2013 the Board received the Affidavit of Responsibility from SUBJECT FIRM confirming the hiring of the new professional surveyor in responsible charge of surveying activities and decisions for SUBJECT FIRM.

On September 30, 2013 Board staff contacted the new professional surveyor listed in responsible charge for SUBJECT FIRM and learned that the surveyor also worked full time for the Virginia Department of Transportation (VDOT), located in Lynchburg, Virginia.

The surveyor stated he planned to oversee SUBJECT FIRM's surveying projects in Ohio and maintain his employment at VDOT. The surveyor stated he will work Monday through Thursday at VDOT and return home to Franklin, Ohio, Thursday night, then work for SUBJECT FIRM Friday- Sunday out of the Cranberry Twp./Pittsburgh office.

On Friday November 22, 2013 Board staff performed an onsite inspection of SUBJECT FIRM's Cranberry, PA office to determine if the surveyor was employed in the capacity indicated on the COA and written correspondence to the Board. Board staff spoke with the only employee working at the firm on that day. Board staff asked the employee if the firm's surveyor would be available for us to talk to. The employee responded by stating the surveyor would not be in as he generally works in the field and mostly works out of the Morgantown, WV location. The employee explained that he has never met the surveyor, but believes the surveyor just started 2-3 weeks prior, when in fact it had been a couple of months.

The employee was asked if any surveying was performed in Ohio out of the SUBJECT FIRM's Cranberry, PA location, and the employee stated they did.

After leaving SUBJECT FIRM'S Cranberry, PA office, Board staff contacted SUBJECT FIRM's Morgantown, WV office to locate the surveyor and confirm he was indeed working out of the Morgantown facility. The

phone rang three (3) times before an administrative employee located at the SUBJECT FIRM's Williamsport, PA office (SUBJECT FIRM's Headquarters), answered the phone. After asking to speak with the surveyor, she explained that the surveyor works out of the Pittsburgh office (confirmed by her as the Cranberry location); however, she believes the surveyor is mostly in the field and rarely in the office. The administrative employee from SUBJECT FIRM's headquarters stated that the surveyor usually only visits the office to turn in his timesheets. She did provide board staff with a cell phone number for the surveyor. It is important to note that this occurred on a Friday, when the firm's surveyor was supposed to be back from Virginia and working for SUBJECT FIRM.

On November 22, 2013 at approximately 2:00pm, Board staff contacted the surveyor on his cell phone. The surveyor indicated that he was in his vehicle traveling home from Virginia to visit his family and would not be at SUBJECT FIRM. The surveyor stated that he decided to leave employment at SUBJECT FIRM effective December 2, 2013. The surveyor indicated to Board staff that SUBJECT FIRM found another professional surveyor located in Cincinnati to be in responsible charge of the firm's surveying services for the State of Ohio.

The surveyor did state that he works out of the SUBJECT FIRM's Cranberry, PA location, but most of the time meets their survey crews at the Morgantown, WV location. The surveyor stated he averages over thirty (30) hours a week with SUBJECT FIRM and is greatly compensated for those hours. The surveyor then stated he gets paid more working with SUBJECT FIRM than what his fulltime salary provides with VDOT. When asked if he is paid by SUBJECT FIRM through salary or hourly rates, he explained that his position is based on salary, but he is paid by the hour.

The surveyor was replaced as the surveyor in responsible charge for SUBJECT FIRM on December 2, 2013 by another Ohio registered professional surveyor (SURVEYOR 2).

On January 3, 2014 Board staff sent a certified letter to SUBJECT FIRM requesting project files and payroll records regarding the surveyor who was also employed by VDOT. Records received by Board staff indicated the surveyor was originally hired to be compensated at \$10.00/per hour, then immediately changed to \$14.22/per hour after beginning work for SUBJECT FIRM.

Regarding the initial complaint, the Board received a written response from SUBJECT FIRM on January 30, 2014 stating they have not assisted any outside firms, persons, registered or unregistered for surveying work at the Water Withdrawal Site. SUBJECT FIRM admitted learning through their investigation of the matter that unlicensed employees of SUBJECT FIRM conducted limited unsupervised survey work at the Water Withdrawal Site in July of 2013. SUBJECT FIRM explained the employees were asked to perform such work by another unlicensed employee who had the wrong interpretation of Ohio's definition of surveying. SUBJECT FIRM assured the Board they have taken the proper steps to educate all employees working in Ohio to prevent future issues.

On February 2, 2014 the Board received an additional written response from SUBJECT FIRM stating, after their own internal investigation regarding the Board's violation letter, they found two unlicensed employees collected topographical data and volumetric measurements using an echo sounder at two water impoundment sites in Monroe County, Ohio. The letter explained that the incident's happened during the time period after the complainant left employment on August 28, 2013 and prior to their hiring a new PS as responsible charge on September 18, 2013. SUBJECT FIRM explained the unlicensed work performed was to determine "as-built" volumes of the water impoundment sites. According to

SUBJECT FIRM, the same manager directed the two unlicensed employees to perform the services and disciplinary action has been taken. SUBJECT FIRM reported the manager is no longer employed with SUBJECT FIRM.

On April 8, 2014 the Board received a letter and 3012 form from SUBJECT FIRM to add another surveyor (SURVEYOR 3) to their COA. On April 10, 2014 Executive Director Greenhalge called SUBJECT FIRM and asked the Sr. Vice President/CFO for SUBJECT FIRM, if the individual was an additional surveyor to be in responsible charge or was he replacing the current professional surveyor (SURVEYOR 2) in responsible charge, and she stated it was an addition. The Board's licensing database was updated to reflect the addition.

On April 14, 2014 the Board received a phone call from the Sr. Vice President/CFO and the President of SUBJECT FIRM advising Executive Director Greenhalge that the information given on April 10th, regarding the addition of a professional surveyor was incorrect and that the professional surveyor (SURVEYOR 3) is actually replacing the existing professional surveyor (SURVEYOR 2). The President advised Executive Director Greenhalge that the firm held a performance meeting and decided to replace professional surveyor 2. The President stated it was for reasons he was not going to get into. Mr. Greenhalge did not ask for an explanation at that time and advised him to send a letter requesting the previous professional surveyor (SURVEYOR 2) be removed.

SUBJECT FIRM's COA to offer and provide engineering and surveying services is active through June 30, 2014.

The Board directed the staff to send a warning letter.

Motion by Mr. Ringle, second by Mr. Cox, to close the complaint. Motion carried.

Unlicensed Engineer _____ Case No. 2014-068

On January 2, 2014 the Board received a complaint alleging SUBJECT made engineering decisions for a county engineer and the SUBJECT claims to perform engineering research. The complainant is specifically concerned with SUBJECT submitting a response to a reporter regarding the oil production process (fracking) and its detriments.

The complainant expressed concerns that SUBJECT is not a professional engineer and has never had any formal engineering training; however, SUBJECT works for the county engineer's office, and the county engineer allegedly allows SUBJECT to make engineering decisions for the county.

Attached to the complaint was an article wherein the author quoted SUBJECT on responses to fracking issues.

According to the county's website, SUBJECT is considered an Administrative Assistant to the Engineer, and has served in that capacity since 1993.

The Board reviewed the complaint and directed the staff to close the complaint due to no violation.

Unlicensed Surveyor _____ Case No. 2014-074

On January 31, 2014 the Board received a complaint alleging SUBJECT was offering and providing surveying services via his company's website. SUBJECT resides in the State of Washington; however, SUBJECT posted on the website a list of three projects in Ohio, wherein SUBJECT provided surveying services. SUBJECT indicated the measurements are roughly within (30 feet) of their property lines and/or monuments.

On February 11, 2014 Board staff began its correspondence with SUBJECT, who stated he was not practicing surveying and that the R.C. Section 4733 defining the practice of surveying was "unconstitutionally vague" among numerous other legal arguments. According to the information provided to Board staff, SUBJECT is not an attorney.

During the Board's correspondence, SUBJECT provided an example of the services he provided for the Board's review.

The Washington Board of Professional Engineers and Surveyors has an open investigation concerning SUBJECT's unlicensed practice of surveying in the state of Washington for over a year, and are currently pursuing criminal charges.

The Board directed the staff to close the complaint and send a warning letter.

Professional Surveyor _____ Case No. 2014-084

On March 3, 2014 SUBJECT PS self-reported that his Indiana Land Surveying license was suspended in 2005, for a series of minimum standards violations. SUBJECT stated he recently attended a PLSO training conference in which he heard Board staff discuss the requirement for engineers and surveyors licensed by this Board to report such suspensions to this Board.

SUBJECT provided a copy of the Indiana Board of Registration for Land Surveyors Final Order which suspended SUBJECT's Land Surveying license until such time as he completed and passed Part II (B) of the Indiana Land Surveyors Exam.

SUBJECT has not completed the required Indiana exam, and stated he has not provided surveying services in Indiana since the final order. Additionally, SUBJECT stated he was unaware of the requirement to report the Indiana suspension, and decided to report the suspension once he was aware of the requirement.

On April 15, 2014 SUBJECT indicated he has been approved by the Indiana Board to take the NCEES exam in October of 2014, and if SUBJECT successfully passes the exam and submits twenty-four (24) CPD hours, SUBJECT can reinstate his license in the state of Indiana.

The Board directed the staff to close the complaint and send SUBJECT a letter reminding him of Ohio's laws and rules governing the practice of engineering and surveying and specifically the duty to report disciplinary actions taken by other jurisdictions.

Professional Engineer Case No. 2014-062

On January 2, 2014 the Board received a renewal application wherein SUBJECT self-reported that he had been charged and convicted of twelve counts of voyeurism.

An investigation by Board staff determined that on November 13, 2014 SUBJECT entered a plea of guilty in the Barberton Municipal Court to twelve (12) charges of *Voyeurism* R.C. 2907.08; each a misdemeanor in the first degree. According to the certified judgment entry and his own admission to this Board, SUBJECT utilized digital video equipment to observe and digitally record males urinating at his place of employment.

Motion by Mr. Ringle, second by Mr. Mawhorr, to charge John Malivuk, P.E. with violations of Ohio Revised Code Sections 4733.11 (E), 4733.20 (A)(4) and Ohio Administrative Code Section 4733-35-02 based on the facts listed in the investigator's charges and issue a notice of opportunity for hearing in accordance with Ohio Revised Code Chapter 119. Motion carried.

Professional Engineer Case No. 2014-063

On April 15, 2013 Board staff received information during a routine NCEES enforcement check that indicated SUBJECT's Kentucky Professional Engineer license had been revoked. Based on information received from the Kentucky Board, it was determined SUBJECT failed to respond to a CPD audit, several violations letters, and notices for hearings. During the Board's investigation of the matter, it was found the SUBJECT is also a licensed attorney and continues to advertise his ability to provide engineering services in Ohio via his law firm's website.

Since the onset of this Board's investigation SUBJECT has failed to respond to inquiries from Board staff. During the course of the Kentucky Board's investigation, SUBJECT refused to cooperate with any aspect of their investigation.

Motion by Mr. Ringle, second by Mr. Cox, to charge Richard Hiatt, P.E. with violations of Ohio Revised Code Sections 4733.02, 4733.20 (A)(2) and (5), 4733.22 and Ohio Administrative Code Section 4733-35-07 and 4733-35-09 based on the facts listed in the investigator's charges and issue a notice of opportunity for hearing in accordance with Ohio Revised Code Chapter 119. Motion carried.

10. CORRESPONDENCE

- A. Letter from Ingrid Duque-Munoz requesting that the Board waive the requirement that engineering experience be completed by the application deadline which is 120 days before the NCEES Principles and Practice of Engineering (PE) examination.

The Board directed the staff to advise Ms. Duque-Munoz that Ohio Administrative Code section 4733-29-01 requires that education and experience be completed before the exam deadline.

- B. Letter from Sat Adlaka, P.E., P.S. requesting the Board to exempt him from the requirement to obtain a certificate of authorization.

The Board directed the staff to advise Mr. Adlaka that the law does not permit an exemption for sole proprietors.

11. NEW BUSINESS

Mr. Greenhalge reported that he was asked to attend a meeting with the Lieutenant Governor's office on Monday May 5, 2014 to discuss concerns with Section 502.14 of the Residential Building Code. Board consultant Bruce Larcomb, P.E. was also asked to attend.

12. UNFINISHED BUSINESS

None discussed.

13. PUBLIC RELATIONS

The certificate ceremony was held on Saturday March 15, 2014 at the Ohio Statehouse Atrium. The following were in attendance to receive their certificates: Engineer Intern- 24, Professional Engineer- 50, Surveyor Intern- 0, Professional Surveyor- 3.

On April 7, 2014 Mr. Greenhalge spoke to students in the surveying program at Columbus State about the registration process and the responsibilities associated with professional licensure, including the Code of Ethics.

14. UPCOMING BOARD MEETINGS

The next meeting is scheduled for Tuesday May 27, 2014.

15. ADJOURNMENT

The Board adjourned at 1:08 p.m.

These minutes were written on May 6, 2014 and approved by the Board on May 27, 2014.

Nelson Kohman, P.E.
Board Chair

Dean C. Ringle, P.E., P.S.
Board Secretary

John F. Greenhalge
Executive Director