

Texas State Board of Plumbing Examiners (TSBPE)

929 East 41st Street, Austin, TX 78751

Board Meeting Minutes

July 10, 2017

Agenda Item 1 – Call to Order.

Mr. Cerda, Board Chair called the meeting to order at 9:00 a.m.

Agenda Item 2 – Roll Call.

Ms. Bodden, Executive Assistant, called the roll. It was noted for the record that a quorum was present.

Ms. Gallagher moved to excuse Mr. Guerra and Mr. Gutierrez from the July 10, 2017, Board Meeting. Mr. Thompson seconded the motion, and the motion carried unanimously.

Members Present:

Enrique Castro, Member
Julio J. Cerda, Board Chair
Ben R. Friedman, Member
Janet L. Gallagher, Member
David A. Garza, Member
Robert F. Jalnos, Member
Edward Thompson, Member

Staff Present:

Lisa G. Hill, Executive Director
Assistant Attorney General Veena Mohan,
General Counsel
Syreeta Alexander, Office of the Attorney General
Eleanor D'Ambrosio, Staff Attorney
Jon Lawson, Staff Attorney
Steve Davis, Director of Enforcement
Cori Briscoe, Director of Financial Operations
Cristabel Bodden, Executive Assistant

Members Absent:

Ricardo J. Guerra, Board Secretary
Milton R. Gutierrez, Member

Agenda Item 3 – Review and approval of April 10, 2017, Board Meeting Minutes.

Mr. Cerda, Board Chair, directed the Board to review the April 10, 2017, meeting minutes under item 3 of the Board Agenda.

Mr. Thompson moved to approve the minutes as written. Mr. Jalnos seconded the motion, and the motion carried unanimously.

Agenda Item 4 – Public Comment.

The following individuals, associations, and organizations presented public comments. Comments were limited to a maximum of 3 minutes.

Alicia Dover – APHCC Texas – Resource only.

Johnny Kurten – Continuing Professional Education Provider – Resource only.

Gail Lux – Texas State Association of Plumbing Inspectors (TSAPI) – Resource only – Expressed his gratitude to the Board and agency staff.

Matthew Winn – President and CEO of Winn’s Continuing Education – Resource only.

Agenda Item 5 – Consideration and action on cases heard before the State Office of Administrative Hearings (SOAH).

(a) Consideration and possible action on SOAH Proposals for Decision regarding applicants with past criminal convictions:

Mr. Cerda, Board Chair asked Ms. Mohan and Ms. Alexander from the Office of the Attorney General to present the SOAH Proposals for Decision regarding applicants with pas criminal convictions.

(i) Christopher Ray Hayes; SOAH Docket No. 456-17-2175.

Ms. Alexander discussed SOAH Docket No. 456-17-2175 and was available for questions.

Mr. Thompson moved to adopt the PFD as written. The motion was seconded by Ms. Gallagher, and the motion carried.

(ii) Martin C. Montoya; SOAH Docket No. 456-17-2595.

Ms. Mohan discussed SOAH Docket No. 456-17-2595 and was available for questions.

Mr. Garza moved to adopt the PFD as written. The motion was seconded by Mr. Jalnos, and the motion carried.

(iii) Adrian Rodriguez; SOAH Docket No. 456-17-2244.

Ms. Mohan discussed SOAH Docket No. 456-17-2244 and was available for questions.

Mr. Jalnos moved to adopt the PFD as written. The motion was seconded by Mr. Castro, and the motion carried.

(iv) Michael Jay Simmons; SOAH Docket No. 456-17-2751.

Ms. Mohan discussed SOAH Docket No. 456-17-2751.

Mr. Cerda, Board Chair called for an Executive Session at 9:17 a.m. to discuss SOAH Docket No. 456-17-2751. The meeting reconvened at 9:29 a.m.

Mr. Simmons was present and came before the Board.

Ms. Gallagher moved to adopt the PFD with exceptions as recommended by staff and for the reasons presented by the Prosecutor. The motion was seconded by Mr. Friedman, and the motion carried.

(b) Consideration and possible action on SOAH Proposals for Decision regarding Administrative Penalties:

Mr. Cerda, Board Chair asked Ms. D'Ambrosio and Mr. Lawson, Staff Attorneys to discuss Item 5(b) (i)-(ii).

(i) Joseph P. Bany; SOAH Docket No. 456-17-2315.

Staff recommended the Board adopt the PFD as written.

Mr. Garza moved to adopt the PFD as written. The motion was seconded by Mr. Thompson, and the motion carried unanimously.

(ii) Logan Lee Mays; SOAH Docket No. 456-17-3227.

Staff recommended the Board adopt the PFD as written.

Mr. Thompson moved to adopt the PFD as written. The motion was seconded by Mr. Garza, and the motion carried unanimously.

(c) Consideration and possible action on SOAH Default Orders:

Mr. Cerda, Board Chair asked Staff Attorneys, Ms. D'Ambrosio and Mr. Lawson, to discuss Item 5(c) (i)-(iii).

(i) Cody Blue; SOAH Docket No. 456-17-3337.

Staff recommended the Board adopt the Default Final Order.

Mr. Jalnos moved to adopt the Default Final Order. The motion was seconded by Mr. Garza, and the motion carried unanimously.

(ii) Victor Polendo, Jr.; SOAH Docket No. 456-17-1417.

Staff recommended the Board adopt the Default Final Order.

Mr. Garza moved to adopt the Default Final Order. The motion was seconded by Mr. Jalnos, and the motion carried unanimously.

(iii) Jason Robinson; SOAH Docket No. 456-17-2924.

Staff recommended the Board adopt the Default Final Order.

Mr. Jalnos moved to adopt the Default Final Order. The motion was seconded by Mr. Thompson, and the motion carried unanimously.

(d) Consideration and possible action on Agreed Final Orders:

Mr. Cerda, Board Chair asked Ms. D'Ambrosio and Mr. Lawson, Staff Attorney's to discuss Item 5(d) (i)-(v).

(i) Asset Management Systems, Inc.; TSBPE Case No. 100870002 and SOAH Docket No. 456-17-1293.

Staff recommended the Board adopt the Agreed Final Order as written.

Mr. Garza moved to adopt the Agreed Final Order as written. The motion was seconded by Ms. Gallagher, and the motion carried unanimously.

(ii) Frank Degollado; TSBPE Case No. 2013-02227 and SOAH Docket No. 456-17-1611.

Staff recommended the Board adopt the Agreed Final Order as written.

Mr. Thompson moved to adopt the Agreed Final Order as written. The motion was seconded by Mr. Jalnos, and the motion carried unanimously.

(iii) Luke Jewell; TSBPE Case No. 2016-00586 and SOAH Docket No. 456-17-2257.

Staff recommended the Board adopt the Agreed Final Order as written.

Ms. Gallagher moved to adopt the Agreed Final Order as written. The motion was seconded by Ms. Gallagher, and the motion carried unanimously.

(iv) Carl Pugliese; TSBPE Case Nos. 2016-01621, 2017-01332 and SOAH Docket No. 456-17-3802.

Staff recommended the Board adopt the Agreed Final Order as written.

Mr. Garza moved to adopt the Agreed Final Order as written. The motion was seconded by Mr. Castro, and the motion carried unanimously.

(v) Steven Slivinski; TSBPE Case No. 2013-02089 and SOAH Docket No. 456-17-4138.

Staff recommended the Board adopt the Agreed Final Order as written.

Mr. Jalnos moved to adopt the Agreed Final Order as written. The motion was seconded by Mr. Garza, and the motion carried unanimously.

Agenda Item 6 – Enforcement Committee Activity Report.

Mr. Cerda, Board Chair asked Ms. Hill, Executive Director to discuss item 6 of the Board Agenda.

Agenda Item 6(a) – Summary of complaint cases reviewed and administrative penalties imposed.

Ms. Hill directed the Board to the report of meetings under item 6(a) of the Board Agenda. Ms. Hill reported that the Enforcement Committee had met on 11 occasions in the last quarter to review to review complaint cases. Ms. Hill confirmed the number of complaint cases reviewed and the outcome of the reviews. There were 210 complaint cases that were reviewed with 92 penalties imposed. Ms. Hill confirmed that no action was required on these items.

Agenda Item 6(b) – Summary of approval and denial of applications for registration and/or examination.

Ms. Hill directed the Board to the report of meetings under item 6(b) of the Board Agenda. Ms. Hill reported that the Enforcement Committee had met on 11 occasions in the last quarter to review applicants for registration and examination who have past criminal convictions. Ms. Hill confirmed the number of applications. Ms. Hill explained there were 158 total applicants that had past criminal

convictions with 76 that were approved and 6 were denied. Ms. Hill explained that no action was required on these items.

Mr. Cerda thanked staff for all their work on these cases.

Agenda Item 6(c) – Cease and Desist Orders issued under Section 1301.5045 of the Plumbing License Law:

Mr. Cerda, Board Chair asked Ms. Hill, Executive Director to discuss Item 6(c)(i)-(vi) of the Board Agenda. Ms. Hill reported on the Cease and Desist Orders presented in the Board materials and when and how the Enforcement Committee determines the need. Ms. Hill confirmed that no action was required on these items. Ms. Hill explained that in many cases the Orders are in addition to other actions taken by the Enforcement Committee.

- (i) **Douglas Troy Fowler; Case No. 2017-01219.**
- (ii) **Kevin L. Garner, Complaint No. 2017-01537.**
- (iii) **Robert Lee Garner, Complaint No. 2017-01537.**
- (iv) **Juan Rodriguez, Complaint No. 2016-01820.**
- (v) **William Tubb, Complaint No. 2016-01825.**
- (vi) **Mike Vanlaningham, Complaint No. 2016-01515.**

Agenda Item 6(d) – Consideration and possible approval of Board Order of Administrative Penalties.

Ms. Hill directed the Board to the Order for Imposition of Administrative Penalties and explained the adoption of the Order for Administrative Penalties to the Board members. Ms. Hill explained that the Administrative Penalties included in the Order are the result of an agreement made under the Board's Administrative Penalty Schedule between the Respondent and the Enforcement Committee. Ms. Hill then directed the Board to the report of previous violators related to the Order for Imposition of Administrative Penalties.

Mr. Garza moved to approve the Board Order of Administrative Penalties as recommended by the Enforcement Committee. Mr. Thompson seconded the motion, and the motion carried unanimously.

Agenda Item 6(e) – Consideration and approval of individuals whose licenses or registrations were previously revoked and are re-applying for registration or examination under Board Rule 365.10:

Mr. Cerda, Board Chair asked Mr. Lawson, Staff Attorney to discuss Item 6(e)(i)-(iv) of the Board Agenda.

Mr. Lawson explained that the individuals being considered today had previously held a license or registration that was revoked due to incarceration and are reapplying for registration or examination under Board Rule 365.10. Mr. Lawson stated that the Enforcement Committee is recommending approval of the following applicants:

- (i) **Shawn K. Brown, Re-applying for registration as a Plumber's Apprentice.**

Mr. Lawson directed the Board to the application and documentation submitted by Mr. Brown under item 6(e)(i) of the Board Agenda.

Mr. Brown was present and came before the Board.

Mr. Garza moved to approve Mr. Brown's application for registration as a Plumber's Apprentice. Mr. Thompson seconded the motion, and the motion carried unanimously.

(ii) Arthur Davila, Jr., Re-applying for registration as a Plumber's Apprentice.

Mr. Lawson directed the Board to the application and documentation submitted by Mr. Davila under item 6(e)(ii) of the Board Agenda.

Mr. Thompson moved to approve Mr. Davila's application for registration as a Plumber's Apprentice. Mr. Jalnos seconded the motion, and the motion carried unanimously.

(iii) Bruce Gregory McFall, Re-applying for registration as a Plumber's Apprentice.

Mr. Lawson directed the Board to the application and documentation submitted by Mr. McFall under item 6(e)(iii) of the Board Agenda.

Mr. Jalnos moved to approve Mr. McFall's application for registration as a Journeyman Plumber. Mr. Friedman seconded the motion, and the motion carried unanimously.

(iv) Daniel Lee Pownall, Jr., Re-applying for registration as a Plumber's Apprentice.

Mr. Lawson directed the Board to the application and documentation submitted by Mr. Pownall under item 6(e)(iv) of the Board Agenda.

Mr. Thompson moved to approve Mr. Pownall's application for registration as a Plumber's Apprentice. Mr. Jalnos seconded the motion, and the motion carried unanimously.

Agenda Item 7 – Continuing Professional Education (CPE) Committee Report.

Mr. Cerda, Board Chair will call on Mr. Jalnos, CPE Committee Chair to discuss Item 7 of the Board Agenda and discuss the CPE Committee Report and the CPE Training – Train the Trainer Workshop.

Mr. Jalnos relayed that the agency held 4 days of Continuing Education Training at the Crowne Plaza hotel and he attended the training on one of these days. He relayed that this was a much better environment to hold the training and that it showed in the interaction, active participation and questions from attendees.

Ms. Hill added that she would like to continue to host the Continuing Education Training at a hotel.

Agenda Item 8 – Rules Committee Report.

Mr. Cerda, Board Chair asked Ms. D'Ambrosio, Staff Attorney to discuss Item 8 of the Board Agenda.

Agenda Item 8(a) – Consideration and possible action on adoption of proposed rule amendments and repeal portions of Texas Administrative Code, Title 22, Part 17, §361.6 and Chapter 365.

8(a)(i) – Review and recommendations for possible adoption of amendments to Texas Administrative Code, Title 22, Part 17, §361.6, Fees, in accordance with Texas Government Code Sec. 2001.039.

Ms. D’Ambrosio relayed that the Board did not receive any public comments after posting on the *Texas Register* therefore, the text is unchanged from what was initially proposed.

The amendments to 361.6 concerning fees reflect the following increases and changes:

- The Course Instructor Certification Training fee is increasing from \$100 to \$150.
- The fee for a duplicate license or registration is increasing from \$10 to \$25.
- The reference to a duplicate license or registration is changed to duplicate pocket card to more accurately reflect current board practices.
- A new provision is added to subsection B4 to specify that the fee for a provisional plumbers apprentice registration issued under 53.0211C of the Texas Occupation Code is equal to the fee for an initial registration.
- A new \$15 fee for a license verification is added to subsection E4.

Mr. Garza moved to adopt the recommendations of amendments to Texas Administrative Code, Title 22, Part 17, §361.1, Fees. Mr. Jalnos seconded the motion, and the motion carried unanimously.

8(a)(ii) – Review of public comments and recommendations for possible adoption of amendments to Texas Administrative Code, Title 22, Part 17, Chapter 365, Licensing and Registration, in accordance with Texas Government Code Sec. 2001.039.

Ms. D’Ambrosio discussed public comments submitted to the *Texas Register* and changes stemming from these public comments.

Mr. Cerda, Board Chair called for a break at 10:39 a.m. The Board meeting reconvened at 10:47 a.m.

Ms. D’Ambrosio relayed that any changes made in direct response to public comments and that are adopted today, do not need to be republished in the *Texas Register* for an additional comment period but for a full adoption.

Gail Lux, Russell Wyman, Jay Wark, and Matthew Winn provided public comments.

Mr. Jalnos made a motion to adopt the amendments to Texas Administrative Code, Title 22, Part 17, Chapter 365, Licensing and Registration, in accordance with Texas Government Code Sec. 2001.039 with the changes and corrections discussed by the Board on subsection C2 from July 1st to September 1st. Mr. Thompson seconded the motion, and the motion carried unanimously.

8(a)(iii) – Review and recommendations for possible repeal of Texas Administrative Code, Title 22, Part 17, §§365.9 and 365.14-365.17.

Ms. D’Ambrosio relayed that the Board did not receive any public comments after posting on the *Texas Register*.

Mr. Jalnos thanked everyone for the comments submitted to the *Texas Register*.

Mr. Jalnos made a motion to repeal Texas Administrative Code, Title 22, Part 17, §§365.9 and 365.14-365.17 as recommended by staff. Mr. Thompson seconded the motion, and the motion carried unanimously.

Agenda Item 8(b) – Consideration and possible action on proposed rule amendments to Texas Administrative Code, Title 22, Part 17, §367.10 as required by the passage of Senate Bill 2065.

Ms. D’Ambrosio discussed and directed the Board to the rule amendments as reflected by the passage of Senate Bill 2065.

Mr. Garza made a motion to take action or move to propose Texas Administrative Code, Title 22, Part 17, §§367.10 as required by the passage of Senate Bill 2065 as recommended by staff. Mr. Jalnos seconded the motion, and the motion carried unanimously.

Agenda Item 9 – Examination Department Activity Report.

Mr. Cerda, Board Chair asked Ms. Hill, Executive Director to discuss item 9 of the Board Agenda.

Agenda Item 9(a) – Comparison of examinations administered and pass fail rates for FY 2016 and FY 2017.

Ms. Hill relayed that the Examination Department continues to be extremely busy and administered 2,012 examinations from September 1, 2016, to May 31, 2017. There were 2,600 examinations administered in FY 2016. The pass fail rate is 70.7% which has changed very little since last year.

Agenda Item 9(b) – New exam scheduling procedure.

Ms. Hill relayed that applications now have a spot for an email address which will allow us to save some money on shipping and the cost of materials sent to the applicant. Ms. Hill added that applicants will now receive an email notice for their scheduled exam and a response back will be required.

In addition, for those that provide an email address, we also plan to begin to send the exam scores the same way. This procedure will make the process a lot easier and more efficient.

Ms. Hill relayed that applicants will not be allowed to change their email address submitted with their applications over the phone further stated that the applicant can only do so, in person, at the time of the exam. There will be no exceptions to this rule.

Agenda Item 10 – Enforcement Department Report.

Mr. Cerda, Board Chair asked Mr. Davis, Director of Enforcement to discuss item 10 of the Board Agenda.

Agenda Item 10(a) – Summary of Field Department activities.

Mr. Davis relayed various activities and demonstrations conducted by the Enforcement Department in the last quarter.

On April 12th, the Enforcement Department participated in a Construction Career Day in San Antonio. Nine hundred high-school age students had the opportunity to explore careers and trades in construction, electrical, plumbing, carpentry, and heating and air conditioning. Sidney Langford, Mike Miller and I put on a cross-connection demonstration for each group.

On April 22nd, the Enforcement Department also conducted an activity at the Brookshire Water Festival. Sydney Langford and I provided information on what the community needs to do to protect their water supply.

Mr. Davis discussed information from the field summary activity report. Mr. Davis relayed that there are a total of nine field investigators in the department.

Agenda Item 11 – Financial Department Reports.

Mr. Cerda, Board Chair asked Ms. Briscoe, Director of Financial Operations and Human Resources to discuss item 11 of the Board Agenda.

Agenda Item 11(a) – FY 2017 Appropriations balances.

Ms. Briscoe discussed page one of the report available to the Board. The first schedule details the fiscal year 2017 appropriation budget for the Board and it shows transfers and the revenues the Board has spent in each strategy. The second schedule details the agency expenditures. Ms. Briscoe explained that staff has continued to spend conservatively throughout the year.

Agenda Item 11(b) – FY 2017 revenues as compared to FY 2016 revenues.

Ms. Briscoe noted that the agency had an increase of 1.4% in revenues as compared to this same time period in fiscal year 2016.

Ms. Briscoe reported that the Board has done well in collecting its revenues in fiscal year 2017.

Agenda Item 11(c) – FY 2017 estimated number of license & registration/examination fees paid as compared to FY 2016.

Ms. Briscoe relayed that her report contained the number of licenses and registration fees received in the first nine months of 2017 as well as the number of examination fees received to date as well as comparison of fiscal year 2016 to 2017.

Ms. Gallagher inquired about administrative and civil penalties in the miscellaneous revenue category and asked where this money came from. Ms. Briscoe replied that the funds came from the administrative penalties imposed and we do not get to keep this money and it goes to the General Fund.

Agenda Item 12 – Audit Committee Report.

Mr. Cerda, Board Chair asked Mr. Thompson, Chair of the Audit Committee to discuss item 12 of the Board Agenda.

Agenda Item 12(a) – Discussion and possible action on financial and/or procedural audit.

Mr. Thompson discussed the history of audits the Board has conducted and their expense and how much their cost has increased in the last few years.

Mr. Cerda relayed the importance of conducting a 3rd party audit for the safety and protection of the Board and it ensures that we are following procedures accurately. It is always better to be safe and stay clean.

Ms. Gallagher requested that staff obtain information from the Texas Workforce Commission on a market study on field staff salaries. Mr. Garza requested that the Board get feedback on this by the next Board meeting.

Mr. Thompson moved to set aside \$25,000 from the FY 2018 Budget for a 3rd party audit or an audit review in lieu of a full audit as proposed by Mr. Garza. The motion was seconded by Mr. Garza, and the motion carried unanimously.

Agenda Item 13 – Executive Director’s Report.

Mr. Cerda, Board Chair asked Ms. Hill, Executive Director to discuss item 13 of the Board Agenda.

Agenda Item 13(a) – Staff changes, retirements and job postings.

Ms. Hill relayed that Lyssa Guerrero was hired to fill the vacant position in the Examination Department.

Ms. Hill relayed that three staff members were retiring this fiscal year: Robert “Bob” Andress, Thelma McPhaul, and Alex Rosenthal. Staff members were presented with awards in recognition for their state service and work for the Plumbing Board.

Ms. Hill relayed that there are two investigator positions that will be posted.

Agenda Item 13(b) – Staff activities.

Ms. Hill relayed that she is scheduled to attend a training in Houston and Amarillo.

Ms. Hill relayed that the Executive Assistant will attend a Business Continuity training.

Ms. Hill relayed that Ed Rouse had done a really good job on a cross-connection demonstration and may possibly star in the very first TSBPE on-line video.

Agenda Item 13(c) – Legislative updates.

Ms. Hill briefly recapped House Bill 2065.

Ms. Hill relayed the big change from 50 years to 35 years for a transfer of license number which passed recently.

Ms. Hill relayed that staff have begun work on the Sunset self-evaluation report.

Agenda Item 13(d) – Report on current projects with the Health Professions Council (HPC).

Ms. Hill relayed that there are several meetings with HPC scheduled on the on-line services system. In addition, the new Voice over Internet phone system be added soon.

Mr. Garza requested that the Board receive a “white paper” sent via email with what is going on with improvements on on-line services, any difficulties, and what part of the transition process we are in and include any additional information, notes, and updates. Mr. Garza also requested the Technology Committee reconvene and meet again soon.

Agenda Item 13(e) – Current Statistics on Licenses and Registrations.

Ms. Hill confirmed that there are 91,212 current and renewable licenses, registrants, and endorsements to date. This is the largest number of licensees and registrants the agency has ever had with only 29 FTEs to accomplish this work load.

Agenda Item 14 – Future Board Meeting Dates.

Mr. Cerda announced that the next Board Meeting would be Monday, October 9, 2017. The first meeting in 2018 will be held on January 8, 2018.

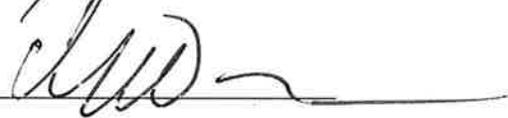
Agenda Item 15 – Adjourn.

Ms. Gallagher moved to adjourn the meeting at 11:59 a.m. Mr. Garza seconded the motion, and the motion carried unanimously.

Minutes adopted by the Board on this 9th day of October, 2017.



Julio Cerda, Board Chair



Ricardo J. Guerra, P.E., Board Secretary