

1 MINUTES

2
3 BOARD OF PROFESSIONAL GEOLOGISTS
4 GENERAL BUSINESS MEETING

5
6 SIRATA BEACH RESORT & CONFERENCE CENTER
7 5300 GULF BLVD.
8 ST. PETE BEACH, FL 33706

9
10 JANUARY 23, 2008 AT 1:00 PM
11 AND
12 JANUARY 24, 2008 AT 9:00 AM
13
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15 Stuart Smith, Chair, called the meeting to order on January 23, 2008, at 1:15 p.m.

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18 Members Present

19 Stuart Smith, Chair
20 Tom Scott
21 Donald McNeill
22 Matthew Cain
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25 Members Not Present

26 James Funderburk, Vice-chair (Excused)
27 Valerie Coton (Excused)
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29

30 Others Present

31 Barbara Edwards, Board Counsel
32 Richard Morrison, Executive Director
33 Eric Hurst, Prosecuting Attorney
34 Stacey Merchant, Government Analyst
35 David Settles
36 Gary Meyer
37 Louis Bustamante
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39 Ms. Edwards was delayed but stated that the board could review the applications as long as the
40 reason for denial was clearly stated on the record.
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42 REVIEW AND APPROVAL OF THE MINUTES

- 43
44 • October 2007 General Business Meeting
45

46 The board reviewed the minutes and after discussion the following motion was made:
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48 MOTION: Mr. Pease made a motion to accept these minutes with corrections.

49 SECOND: Dr. McNeill seconded and the motion passed unanimously.
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51 REVIEW OF THE TASK FUNCTION FORM

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53 Mr. Smith reviewed the task function form with staff and members of the board.
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55 Mr. Morrison stated that he will need to ask Ms. Coton to serve on the Probable Cause Panel.
56

57 APPLICATION REVIEW

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59 ENDORSEMENT

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61 Kevin E. Day

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63 Mr. Day was not present.

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65 After discussion the following motion was made:

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67 MOTION: Mr. Pease made a motion to approve Mr. Day's application for licensure by
68 endorsement.

69 SECOND: Dr. McNeill seconded and the motion passed unanimously.

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71 Hershel Dale Lanier

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73 Mr. Lanier was not present.

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75 After discussion the following motion was made:

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77 MOTION: Mr. Cain made a motion to approve Mr. Lanier's application for licensure by
78 endorsement.

79 SECOND: Dr. McNeill seconded and the motion passed unanimously.

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81 David J. Settles

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83 Mr. Settles was present.

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85 After discussion the following motion was made:

86 MOTION: Dr. McNeill made a motion to approve Mr. Settle's application for licensure by
87 endorsement.

88 SECOND: Dr. Scott seconded and the motion passed unanimously.

89

90 EXAMINATION

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92 Louis Bustamante

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94 Mr. Bustamante was present.

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96 After discussion the following motion was made:

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98 MOTION: Mr. Pease made a motion to approve Mr. Bustamante's application for licensure
99 by examination.

100 SECOND: Dr. McNeill seconded and the motion passed unanimously.

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102 Lora S. Eddy

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104 Ms. Eddy was not present.

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106 After discussion the following motion was made:

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108 MOTION: Mr. Pease made a motion to approve Ms. Eddy's application for licensure by
109 examination.

110 SECOND: Mr. Smith seconded and the motion passed unanimously.

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113 Jason Jon Larache
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115 Mr. Larache was not present.
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117 After discussion the following motion was made:
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119 MOTION: Mr. Pease made a motion to approve Mr. Larache's application for licensure by
120 examination.
121 SECOND: Dr. McNeill seconded and the motion passed unanimously.
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123 Gary D. Meyer
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125 Mr. Meyer was present.
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127 After discussion the following motion was made:
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129 MOTION: Mr. Pease made a motion to approve Mr. Meyer's application for licensure by
130 examination.
131 SECOND: Mr. Cain seconded and the motion passed unanimously.
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133 Jerome C. Wentz
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135 Mr. Wentz was not present.
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137 After discussion the following motion was made:
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139 MOTION: Mr. Smith made a motion to approve Mr. Wentz's application for licensure by
140 examination.
141 SECOND: Dr. Scott seconded and the motion passed unanimously.
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143 Joseph Scott Lasala
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145 Mr. Lasala was not present.
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147 After discussion the following motion was made:
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149 MOTION: Dr. Scott made a motion to approve Mr. Lasala's application for licensure by
150 examination.
151 SECOND: Mr. Pease seconded and the motion passed unanimously.
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153 Loren North
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155 Mr. North was not present.
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157 After discussion the following motion was made:
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159 MOTION: Mr. Pease made a motion to approve Mr. North's application for licensure by
160 examination.
161 SECOND: Mr. Cain seconded and the motion passed unanimously.
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163 PROSECUTING ATTORNEY'S REPORT – Eric Hurst
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165 Mr. Hurst stated that he has reviewed one case and has prepared it for presentation to the
166 probable cause panel.
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Bacchus Litigation

Mr. Hurst stated that April Skilling, Deputy General Counsel, had planned to attend this meeting and discuss the Bacchus Litigation with the board. Ms. Skilling was unable to attend but gave Mr. Hurst her notes regarding this Federal lawsuit.

Mr. Hurst stated that the Judge's Order Denying the Motions to Dismiss was in the board's materials and it is pretty obvious how he would have ruled in this case. Mr. Hurst stated that he felt the Department would have lost and would have lost big. The attorney's fees were mounting by the day and he feels like the board got off for a whole lot less than they would have if the case had gone to trial and they had to pay the attorney's fees.

Mr. Hurst read Ms. Skilling's notes quoting "As a result of the Bacchus Case, the Department reviewed its usage of what was previously termed "Notice and Order to Cease and Desist". Under section 455.228, F.S., the Notice to Cease and Desist was never meant to be final agency action, in fact the statute even states that it is not be final agency action. It appears the problem with these notices for the Department arose out of a misreading of the statutory intent. The statute is a bit confusing, it starts out calling the notice a notice to cease and desist, but changes terms part of the way through calling it an order, which really is a type of final agency action. "

"While we work to clear up the statute, we have already redrafted our Notice to Cease and Desist within the agency. The new notice will be just that, a warning that the department believes a person may be violating the statute or rule through the unlicensed practice of a profession. One thing will be clear; no one will have the authority to issue a Notice of Cease and Desist in cases of oral speech without first having the approval of the Office of the General Counsel. The changes being made by the Department directly relate to the concerns raised in the Bacchus Case concerning prior restraint on free speech."

The Department is also changing when Notices to Cease and Desists are issued and when Citations are issued. Previously, Notices to Cease and Desist were issued in conjunction with a Citation in cases with no consumer harm. Under the new policy, Citations will be used as the next step up and clearly provide the receiver of the Citation an opportunity to pay the Citation, or in the alternative, an avenue to fight the Citation and request a Chapter 120 hearing. Thus Citations will be used for second offenses or where there is consumer harm."

These departmental changes are not completely in effect yet, as they are being signed off on within the department. As soon as the Secretary's new policy is issued we will let all boards know of these changes. Additionally, we will be working with the Division of Regulation to be sure all investigators are trained on the new policies and procedures."

Mr. Hurst stated that the Department would like the board to consider "beefing up" their definition of "the practice of Professional Geology". Mr. Hurst explained that while our attorneys were preparing to litigate this case, they pulled the definitions from all other states that have them and many of them have much more detail than ours.

Mr. Hurst also informed the board that the list of tasks traditionally performed by Professional Geologists is not a rule policy and could cause problems in the future.

After discussion, Mr. Hurst was asked to send copies of the statutes and rules from the other states for the board to review to discuss possible rule changes at a future meeting.

Mr. Smith adjourned the meeting at 2:28 p.m.

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226 Stuart Smith, Chair, called the meeting to order on January 24, 2008, at 9:00 a.m.
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228 Members Present
229 Stuart Smith, Chair
230 Tom Scott
231 Donald McNeill
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233 Members Not Present
234 James Funderburk, Vice-chair (Excused)
235 Valerie Coton (Excused)
236 Matthew Cain (Excused, Thursday only)
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238 Others Present
239 Barbara Edwards, Board Counsel
240 Richard Morrison, Executive Director
241 Eric Hurst, Prosecuting Attorney
242 Stacey Merchant, Government Analyst
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244 REPORTS
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246 Chair Report – Stuart Smith
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248 Executive Directors Report – Richard Morrison
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250 June 30, 2007 Operating Account Financial Report
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252 June 30, 2007 Unlicensed Activity Account Financial Report
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254 Board Counsel Report – Barbara Edwards
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256 Correspondence From Josh Patterson Regarding the Educational and Experience Requirements
257 Under 61G16-5.004, F.A.C.
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259 Rules Report
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261 NEW/OLD BUSINESS
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263 Election of Officers
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265 After discussion the following motions were made:
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267 MOTION: Mr. Pease made a motion to nominate Mr. Funderburk as Chair.
268 SECOND: Dr. Scott seconded and the motion passed unanimously.
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270 MOTION: Dr. Scott made a motion to nominate Mr. Cain as Vice-Chair.
271 SECOND: Dr. McNeill seconded and the motion passed unanimously.
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273 With no other business to discuss, the meeting was adjourned at 10:32 a.m.
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