

MINUTES

BOARD OF PROFESSIONAL GEOLOGISTS GENERAL BUSINESS MEETING

Department of Business Professional Regulation
Board Conference Room
1940 North Monroe Street
Tallahassee, Florida 32399

October 20-21, 2004

CALL TO ORDER

Dr. Scott called the meeting to order October 20, 2004 at 1:00 p.m.

MEMBERS PRESENT:

Tom Scott, Ph.D., PG, Chair
Dawn Blackledge, PG,
Donald McNeill, Ph.D. PG, Vice -Chair
James Pease, PG
Gabrielle Enos, PG
Stuart Smith

MEMBERS NOT PRESENT:

Valerie Francisco, PG

OTHERS PRESENT:

John Knap, Executive Director
Christa Patterson, Government Analyst
Barbara Edwards, Board Counsel
Eric Hurst, Prosecuting Attorney
Walt Schmidt

REVIEW AND APPROVAL OF GENERAL BUSINESS MEETING MINUTES

July 28-29, 2004

The board reviewed the July 28-29, 2004 general business meeting minutes and after review the following motion was made.

MOTION: Ms. Blackledge made a motion to approve the July 28-29, 2004 general business meeting minutes.

SECOND: Mr. Pease seconded the motion and it passed unanimously.

September 1, 2004 – Telephone Conference Call

The board reviewed the September 1, 2004 general business meeting minutes and after review the following motion was made.

MOTION: Mr. Pease made a motion to approve the September 1, 2004 general business meeting minutes.
SECOND: Ms. Enos seconded the motion and it passed unanimously.

Ms. Patterson advised the board that she did not complete the October 5, 2004 general business meeting and would include the minutes in the next agenda.

REVIEW OF THE TASK FUNCTION FORM

Ms. Blackledge asked Ms. Patterson if the draft disciplinary rules were posted on the board's web page. Ms. Edwards advised the board that the disciplinary rule was noticed as rule development and the final language was going to be reviewed by the board at this meeting. The board asked that the board rules be updated with the new language as soon as possible.

Ms. Patterson advised the board that the applications were revised and that she provided the board with a copy in their board member folders.

The board asked Ms. Patterson the status of the newsletter. Ms. Patterson advised the board that she had not received any articles. Ms. Enos stated she would continue to work with Ms. Patterson and advised the board that she would be notifying members of article deadlines.

Ms. Blackledge suggested since Ms. Enos was not going to be attending future meetings that a new communications committee member be appointed to assure the newsletter is completed. Each member stated they would make the articles a priority.

Dr. Scott asked Mr. Knap if he had an estimate cost of mailing out current copies of the board's laws and rules and a roster of licensees. Mr. Knap advised the board that the printing cost was estimated at \$3000.00 and the cost for mailing the packets would be \$1.52 per item.

After discussion by the board Dr. McNeill suggested that a PDF file of licensed Geologists and Geology businesses be included on the board's web page. Mr. Knap stated he would check with the Department and if possible he would make the request.

Ms. Enos advised the board that her board member term was going to expire October 31, 2004. Ms. Enos stated she would not be attending any more meetings. Mr. Knap advised Ms. Enos that until the Governor's office makes a replacement she could continue attending the meetings. Ms. Enos stated that she was going to send a resignation letter to the Appointments office and asked Mr. Knap to contact the Governor's Appointment office to follow-up on a replacement.

Dr. Scott asked Mr. Smith if he had been in contact with the Department's technology office regarding suggestions and revisions to the board's web page. Mr. Smith stated that due to circumstances he has not had the opportunity to follow-up with the Department.

Dr. Scott asked Mr. Knap if he had the opportunity to request an Audit of the geologists of record and record clean up. Mr. Knap advised the board that he was in the process of requesting that the Department do a 100% audit of the geologists of record. Mr. Knap stated that the problem with the geologist business having out dated geologists of record

information was due to an education issue and stated there was a way to delete the old geologists of record information. Mr. Knap stated that through the audit, the records could be cleaned up.

Ms. Edwards asked the board if a probable cause panel had been appointed. Dr. Scott advised Ms. Edwards that himself, Ms. Francisco and Dr. Kwader were on the probable cause panel.

APPLICATION REVIEW

The board discussed the new application review procedure. Ms. Patterson advised the board that each member was provided a copy of each application file and that she had also brought the original files in case a member came across a copy that was not clear.

Ms. Blackledge stated that it was her opinion that it was not necessary for the board staff to provide copies to each of the members and that the review of the original files by two members was sufficient. Ms. Blackledge stated that she did not think this new procedure was going to expedite the application process and that it was a waste of paper.

Ms. Edwards advised the board that she and her supervisor thought it would be a more efficient procedure for the board to review the applications. Ms. Edwards stated that each board member would have the opportunity to review the applications prior to the meeting and each board member would be able to report their recommendations. Ms. Edwards stated this process could also be used as a training tool for application review.

Mr. Smith stated that he agreed with Ms. Blackledge and did not see how the new process would be beneficial. Ms. Edwards stated that all board members' discussion should be in accordance with the sunshine law.

Mr. Pease asked the question when did Florida start administering the ASBOG examination. Ms. Enos advised the board that Florida started administering the examination during the March 1999 administration.

Mr. Pease asked if the board ever produced a list of other state examinations that were equivalent to the ASBOG. Ms. Patterson advised the board that she had completed research of the board's records and couldn't locate a list.

The board asked Ms. Patterson to conduct a search of the past board rules to obtain history information on the content of the Florida administered exam and the exam requirements of endorsement candidates. The board asked Ms. Patterson to report at the next meeting.

The board reviewed applications for licensure by endorsement and examination and after review the following motions were made.

MOTION: Ms. Blackledge made a motion to deny Fredrick Bopp's application for licensure by endorsement. Mr. Bopp did not take a licensure examination. Ms. Blackledge stated that if Mr. Bopp paid the additional fee he could take the licensure examination.

SECOND: Mr. Pease seconded the motion and it passed unanimously.

MOTION: Mr. Pease made a motion to approve John Fleck's application for licensure by endorsement.
SECOND: Dr. McNeill seconded the motion and it passed unanimously.

MOTION: Ms. Blackledge made a motion to approve William Tate's application for licensure by endorsement.
SECOND: Mr. Smith seconded the motion and it passed unanimously.

MOTION: Mr. Pease made a motion to deny Raul Zaballos' application for licensure by endorsement. Mr. Zaballos did not take a licensure examination. Mr. Pease stated that if Mr. Zaballos paid the additional fee he could take the licensure examination.
SECOND: Ms. Enos seconded the motion and it passed unanimously.

MOTION: Mr. Pease made a motion to approve Joseph Governale's application for licensure by examination.
SECOND: Dr. McNeill seconded the motion and it passed unanimously.

MOTION: Ms. Enos made a motion to approve Geoffrey Parish's application for licensure by examination.
SECOND: Mr. Smith seconded the motion and it passed unanimously.

REVIEW/DISCUSSION OF FINAL DISCIPLINARY RULE DRAFT

Ms. Edwards distributed the final draft of the disciplinary rule and reviewed the rule with the board. After discussion the board made some changes.

The board discussed collections for fines and what would happen if a licensee did not comply. Mr. Knap advised the board that the licensee would be in violation of their Final Order and the case would be referred back to Regulation for another case to be opened. Mr. Knap advised the board that the Department did have an attorney that only handled collecting fines.

The board asked Mr. Knap to provide a copy of the Department's process of collecting fines.

MOTION: Ms. Enos made a motion to approve the rule as amended. See language below.
SECOND: Mr. Pease seconded the motion and it passed unanimously.

Ms. Edwards advised the board that she might have to make further amendments to this rule.

61G16-9 DISCIPLINARY GUIDELINES

(1) Whenever the Board finds a licensee guilty of violating a provision of Chapter 492, the following Penalty Guidelines shall be followed:

Statutory Violation ¹	Description of Violation	Penalty Range for First Violation	Penalty Range for Subsequent Violation
(a) Violation of: 492.109	Failure to file changes of address with the Department.	Fine up to \$1000 + Costs; Plus Reprimand, Probation or Suspension-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation or Suspension, Revocation or Deny License-all with Usual Conditions
(b) Violation of: 492.111(1)	Failure of business enterprise to have name and license number of current geologist of record on file with the Department	Fine up to \$xxxx + Costs; Plus	Fine up to \$xxxx + Costs; Plus
(c) Violation of: 492.111(2)	Operating a Business without a Certificate of Authorization from the Department.	Fine up to \$xxxx + Costs; Plus	Fine up to \$xxxx + Costs; Plus
(d) Violation of: 492.111(3)	Failure to have final papers or documents dated, signed and sealed by the professional geologist who prepared or approved the papers, prior to delivery to anyone for public record.	Fine up to \$xxxx + Costs; Plus	Fine up to \$xxxx + Costs; Plus
(e) Violation of: 492.112(1)(a)	Knowing Unlicensed practice	Fine up to \$500 + Costs; Probation or Suspension- all with Usual Conditions	Fine up to \$1000 + Costs; Suspension or Revocation- all with Usual Conditions
(f) Violation of: 492.112(1)(b)	Knowingly use "PG" or other title, designation or letters to indicate licensure under Chapter 492.	Fine up to \$500 + Costs; Reprimand or Probation - all with Usual Conditions	Fine up to \$1000 + Costs; Suspension or Revocation - all with Usual Conditions, Plus referral to the state attorney for prosecution of the first degree misdemeanor
(g) Violation of: 492.112(1)(c)	Knowingly present as ones own the license of another	Fine up to \$1000 + Costs; Plus Probation or Suspension- all with Usual Conditions; Plus referral to the state attorney for prosecution of the first degree misdemeanor	Fine up to \$1000 + Costs; Plus Suspension or Revocation- all with Usual Conditions; Plus referral to the state attorney for prosecution of the first degree misdemeanor
(h) Violation of: 492.112(1)(d)	Knowing give false or forged evidence to DBPR.	Fine up to \$1000 + Costs; Plus Probation, Suspension or Revocation- all with Usual Conditions, Plus referral to the state attorney for prosecution of the first degree misdemeanor	Fine up to \$1000 + Costs; Plus Suspension or Revocation-all with Usual Conditions, Plus referral to the state attorney for prosecution of the first degree misdemeanor

(i) Violation of: 492.112(1)(e)	Knowing use or attempt to use a suspended, revoked, inactive or delinquent license.	Fine up to \$500 + Costs; Plus Reprimand, Probation or Suspension- all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension or Revocation- all with Usual Conditions, Plus referral to the state attorney for prosecution of the first degree misdemeanor
(j) Violation of: 492.112(1)(f)	Knowingly employ unlicensed person to practice geology. Aid or abet practice contrary to Ch 492 or 455, or Rules of the Department or Board. Delegate performance to one unqualified to do the act or provide the service to be performed.	Fine up to \$500 + Costs; Plus Probation, Suspension or Revocation-all with Usual Conditions, Plus referral to the state attorney for prosecution of the first degree misdemeanor	Fine up to \$1000 + Costs; Plus Suspension or Revocation-all with Usual Conditions; Plus referral to the state attorney for prosecution of the first degree misdemeanor
(k) Violation of: 492.112(1)(g)	Knowingly conceal information about violation of Chapter 492, the chapter regulating the violator or rules of the Department or Board.	Fine up to \$500 + Costs; Plus Probation with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation, Suspension or Revocation-all with Usual Conditions; Plus referral to the state attorney for prosecution of the first degree misdemeanor
(l) Violation of: 492.113(1)(a)	Violation of any provision of Chapter 492. (Use only if no statutory specific provision in this rule)	Fine up to \$1000 + Costs; Plus Reprimand, Probation or Suspension all with Usual Conditions	Fine up to \$1000 + Costs Probation, Suspension, Revocation or Deny License-all with Usual Conditions
(m) Violation of: 492.113(1)(b)	Attempting to procure a license by bribery or fraudulent misrepresentations or through an error of the Board.	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License-all with Usual Conditions
(n) Violation of: 492.113(1)(c)	Having a geology license revoked, suspended, denied or acted against in another state, territory or country.	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation or Deny License-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation or Deny License-all with Usual Conditions
(o) Violation of: 492.113(1)(d)	Being convicted, found guilty, pleading nolo to a crime, in any jurisdiction, that directly relates to the practice or ability to practice.	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License- all with Usual Conditions	Fine up to \$1000 + Costs; Plus Revocation or Deny License- all with Usual Conditions
(p) Violation of: 492.113(1)(e)	Making or filing a known false report, willfully failing to file a required record or report, willfully impeding or obstructing such filing. Includes only those records signed in capacity as a professional geologist.	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License- all with Usual Conditions	Fine up to \$1000 + Costs; Plus Revocation or Deny License-all with Usual Conditions

(q) Violation of: 492.113(1)(f)	False, fraudulent, deceptive or misleading advertising	Fine up to \$1000 + Costs; Plus Reprimand, Probation or Suspension-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation, or Deny License- all with Usual Conditions
(r) Violation of: 492.113(1)(g)	Committing fraud, deceit, negligence, incompetence, or misconduct in the practice.	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation, or Deny License-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation, or Deny License- all with Usual Conditions
(s) Violation of: 492.113(1)(h)	Violation of Chapter 455 (use only when no reference to the 455 provisions is found in subsection 2)	Fine up to \$1000 + Costs; Plus Reprimand, Probation or Suspension-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License-all with Usual Conditions
(t) Violation of: 492.113(1)(i)	Practicing on a revoked, suspended, inactive or delinquent license.	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License- all with Usual Conditions
(u) Violation of: 492.113(1)(j)	Affixing or permitting same of his name to geological papers, reports or documents neither prepared by licensee or under his responsible supervision, direction or control	Fine up to \$1000 + Costs; Plus Probation or Suspension, all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License- all with Usual Conditions
(v) Violation of: 492.113(1)(k)	Violating a rule or <u>violating</u> any order previously entered in a disciplinary hearing	Fine up to \$1000 + Costs, Plus Probation or Suspension-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions

(2) Whenever the Board finds a licensee guilty of violating a provision of Chapter 455, the following Penalty Guidelines shall be followed:

a. Violation of: 455.227(1)(a)	False, fraudulent, deceptive or misleading representations in or related to the practice of professional geology	Fine up to \$1000 + Costs; Plus Reprimand, Probation or Suspension - all with Usual Conditions	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation, or Deny License - all with Usual Conditions
b. Violation of: 455.227(1)(b)	Intentional violation of any Board Rule	Fine up to \$1000 + Costs; Plus Probation or Suspension - all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License - all with Usual Conditions

c. Violation of: 455.227(1)(c)	Being convicted, found guilty, pleading nolo to a crime, in any jurisdiction, that relates to the practice or ability to practice professional geology.	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Revocation or Deny License-all with Usual Conditions
(d) Violation of: 455.227(1)(f)	Having a geology license revoked, suspended, denied or acted against in another state, territory or country	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation or Deny License- all with Usual Conditions	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation or Deny License- all with Usual Conditions
(e) Violation of: 455.227(1)(g)	Having been found civilly liable for knowingly filing false report or complaint with DBPR against another licensee	Fine up to \$1000 + Costs; Plus Probation or Suspension - all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions
(f) Violation of: 455.227(1)(h)	Attempting or succeeding to procure or renew a license by bribery or fraudulent misrepresentation or through an error of the Board or Department	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License-all with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation, Suspension, Revocation or Deny License-all with Usual Conditions
(g) Violation of: 455.227(1)(i)	Knowingly conceal information about violation of Chapter 492, or the rules of the Department or Board	Fine up to \$500 + Costs; Plus Probation with Usual Conditions	Fine up to \$1000 + Costs; Plus Probation, Suspension or Revocation - all with Usual Conditions
(h) Violation of: 455.227(1)(j)	Aid, assist, procure, employ or advise unlicensed person or entity to practice profession contrary to Chapters 492 or 455, or Rules of the Board.	Fine up to \$500 + Costs; Plus Probation, Suspension or Revocation- all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension or Revocation- all with Usual Conditions
(i) Violation of: 455.227(1)(k)	Failing to perform any statutory or legal obligation of licensee	Fine up to \$1000 + Costs; Plus Probation, Suspension or Revocation- all with Usual Conditions	Fine up to \$1000 + Costs; Plus Suspension or Revocation- all with Usual Conditions
(j) Violation of: 455.227(1)(l)	Making or filing a known false report, willfully failing to file a required record or report, willfully impeding or obstructing such filing. Includes only those records or reports signed in capacity as a professional geologist	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions.	Fine up to \$1000 + Costs; Plus Revocation or Deny License.
(k) Violation of: 455.227(1)(m)	Making deceptive, untrue or fraudulent representations in or related to practice of professional geology	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions.	Fine up to \$1000 + Costs; Plus Revocation or Deny License.
(l) Violation of: 455.227(1)(n)	Exercise influence on client for improper financial gain of licensee or third party.	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation or Deny License-all with Usual Conditions.	Fine up to \$1000 + Costs; Plus Reprimand, Probation, Suspension, Revocation or Deny License- all with Usual Conditions
(m) Violation of: 455.227(1)(o)	Practicing beyond the scope of license	Fine up to \$1000 + Costs; Plus Probation or Suspension-all with Usual Conditions.	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions
(n) Violation of: 455.227(1)(p)	Accepting and performing or delegating responsibilities licensee knows or should know he or the delegee is not competent to perform	Fine up to \$1000 + Costs; Plus Probation or Suspension-all with Usual Conditions.	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions

(o) Violation of: 455.227(1)(q)	Violating any provision of Chapters 492 or 455, rules of the Department or Board, or any lawful Order of the Board.	Fine up to \$500 + Costs; Plus Reprimand, Probation or Suspension-all with Usual Conditions.	Fine up to \$2500 + Costs; Plus Probation or Suspension-all with Usual Conditions.
(p) Violation of: 455.227(1)(r)	Interfering with investigation, inspection or disciplinary proceeding	Fine up to \$1000 + Costs; Plus Reprimand, Probation or Suspension-all with Usual Conditions.	Fine up to \$1000 + Costs; Plus Suspension, Revocation or Deny License-all with Usual Conditions

(3) The Usual Conditions.

(a) Provisions which are included in all Orders.

1 This Order shall be effective upon filing by the Clerk of the Department of Business and Professional Regulation.

2 Failure to comply with the provisions of this Order can result in further disciplinary action by the Board.

(b) Conditions imposed whenever fine and costs are imposed:

1 Fine and costs shall be paid by cashiers check or money order payable to the Department of Business and Professional Regulation, Board of Professional Geologists, 1940 North Monroe Street, Tallahassee, Florida 32399, and received by the Department within 30 days of the effective date of the Order, or within a set period of time after probation or suspension.

(c) Conditions, all or any of which may be imposed with Probation are:

1 Licensee is placed on probation for a period of time as determined by the board.

2 Failure to comply with any provision of this Order will result in the filing of a new complaint and if you are found to be in violation, your license will be suspended until you are compliant.

3 Licensee shall appear before the Board, in person, at a defined frequency or set number of Board meetings during the course of the probation.

i. The licensee shall appear in person before the Board at intervals during the course of this probation as determined by the Board.

4 At each appearance the licensee shall provide the following documents to the Board: Some or all of the following provisions may be included:

i. Copies of all contracts in which documents have been signed and sealed since the last appearance before the Board, and/or.

ii. A list of the type of those documents, including the following information to whom was the document presented, including the address, and the date the document was mailed or otherwise presented, and/or

iii. A list of all contracts worked upon since the last appearance with the name and address of the person or entity for whom the contract is to be performed.

5 At the final appearance the licensee shall demonstrate compliance with all the conditions of the Probationary Order, prior to the lifting of probation.

6 Licensee shall retake the following section of the licensing examination prior to lifting the probation.

7 Licensee must attend a number of Board meetings, to be determined by the Board, to observe the Disciplinary Proceedings.

8 Licensee's practice during this period of probation is limited as follows:

(d) Conditions all or any of which may be imposed when suspension is imposed.

1 Licensee shall surrender license to Board office within five (5) days of the effective date of the Order.

2 Licensee shall provide the Board, within 30 days of the effective date of the Order of Suspension, a list of all clients with whom he/she/it is contracted to perform professional geological services in the state of Florida, that is not or will not be completed on the 30th day following the effective date of the Order of Suspension. The list shall include the name of a contact person, a mailing address and phone number of the client.

3 Licensee shall inform all current clients that he/she/it must cease work on the project for the term of his/her/its suspension, provide the Board office with a copy of each cease work letter or other document sent, or a list of the person called, his/her address, phone number and the date

of contact.

4 Licensee shall Sign and Seal all documents completed as of the date of suspension and deliver to clients within 30 days of the effective date of the Order.

5 Licensee shall provide clients with a list of licensed professional geologists who work in the area, so the client can try to find a substitute who can complete the project as originally contemplated.

6. Failure to comply with any provision of this Order will result in the filing of a new complaint and if you are found to be in violation, your license will be revoked with no possibility of relicensure until compliant with all outstanding Orders.

(4) Purpose of guidelines – The range of penalties set forth above is the range from which disciplinary penalties will be imposed upon licensees guilty of violation the laws and rules. The purpose of these guidelines is to give notice of the range of penalties which will normally be imposed for specific violations. The guidelines are based upon a single count violation of the provision listed. Multiple counts of violations of the same provision, or unrelated provisions of the law or rules will be grounds for enhancement of penalties.

(5) Aggravating/Mitigating Circumstances – The existence of aggravating or mitigating circumstances, as set forth below, will permit deviation from the guidelines upon clear and convincing evidence presented to the board by the prosecutor, prior to the imposition of a final penalty. When considering a Recommended Order, the fact that a Hearing Officer may or may not have been aware of them, prior to recommending a penalty, shall not obviate the duty of the board to consider them when brought to its attention prior to the issuance of a Final Order.

(a) Aggravating circumstances; circumstances which may justify deviating from the disciplinary guidelines and penalty enhancement include, but are not limited to:

1 History of previous violation of the practice act and the rules promulgated thereto.

2 In the case of negligence, the magnitude and scope of the project and the damage inflicted upon the public.

3 Evidence of violation of professional practice acts in other jurisdictions which resulted in discipline by the regulatory authority.

4 Prior reports of violations of the same provision of the practice act which resulted in a letter of guidance having been issued to the licensee.

(b) Mitigating circumstances; circumstances which may justify deviating from the disciplinary guidelines and result in a lessening of the penalty shall include, but not be limited to:

1. In cases of negligence, the minor nature of the project in question and the lack of danger to the public health, safety or welfare which resulted.

2 Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices or has practiced.

3 Restitution of any damages suffered by the licensee's client.

4 The licensee's professional standing among his peers including continuing education.

5 Remedial steps taken by the licensee or his firm to avoid similar violations in the future.

(6) Notice of Noncompliance – An alternative to investigation and prosecution when a complaint is received, the Department of Business and Professional Regulation may issue a Notice of Noncompliance for a first offense of the following violations:

(a) Failure to date document when affixing signature and seal.

(b) Practice by an individual with an inactive or delinquent license for less than one month.

(c) Practice by a firm without a current certificate of authorization for less than one month.

Specific Authority 455.2273, 492.104(1), 492.113(2) F.S. Law Implemented 455.227, 455.2273, 492.104(1), 492.113(2) F.S. History– New .

REVIEW/DISCUSSION OF REVISED GEOLOGY EXAM AND ENDORSEMENT APPLICATIONS

The board reviewed the revised applications and made some suggestions. The board asked Ms. Patterson to report the board's suggestions to the Department. Ms. Patterson advised the board that she notified the application intake office of the board's changes and corrected supervision forms would no longer be accepted. If the supervisor made an error on the form then the supervisor will have to complete a new form. The board

agreed.

The board recessed at 4:45 to reconvene on October 21st.

Dr. Scott called the meeting to order October 21, 2004 at 9:00 a.m.

MEMBERS PRESENT:

Tom Scott, Ph.D., PG, Chair
Dawn Blackledge, PG,
Donald McNeill, Ph.D. PG, Vice -Chair
James Pease, PG
Gabrielle Enos, PG
Stuart Smith

MEMBERS NOT PRESENT:

Valerie Francisco, PG

OTHERS PRESENT:

John Knap, Executive Director
Christa Patterson, Government Analyst
Barbara Edwards, Board Counsel
Eric Hurst, Prosecuting Attorney
Walt Schmidt
Lanier Mathews, II
Sue Haber-Shaw, Court Reporter

DISCIPLINARY PROCEEDINGS – Eric Hurst

Settlement Stipulation

Environmental Land Services, Inc.
Case # 2001-07153
PCP: Tom Scott and Tom Kwader

And

Richard Alan Welch
Case #2001-01856

Mr. Welch was not present at the meeting but was represented by Mr. McCain, Esq. Mr. McCain addressed the board and stated Mr. Welch was not present due to being deployed by the military. Mr. McCain advised the board that Environmental Land Services, Inc., and Mr. Welch agreed to enter into the Settlement Stipulation.

Dr. Scott was recused from the hearing due to his participation on the probable cause panel.

Mr. Hurst reviewed the settlement stipulation with the board. Ms. Edwards advised the board that the wording of the terms of the probation would only require Mr. Welch to appear before the board once. Ms. Edwards suggested that the probation term read “ 6 months of the effective date of the order”. Mr. Hurst stated that the intent was that the first appearance be no earlier than 6 months from the entry of the order. The board

agreed. Mr. McCain agreed and stated that the intent was to appear before the board once a year to discuss the compliance to the terms of the settlement stipulation.

Dr. McNeill noted that Mr. Welch, in an earlier case stipulated to provide evidence of course work to complete a Bachelor of Science degree in Geology. Dr. McNeill asked Mr. Hurst if Mr. Welch complied. Mr. Hurst advised the board that the prior case had been issued a closing order. Dr. McNeill stated he was concerned that there was nothing in the file to verify the course work and felt it had bearing on this case. The board agreed. Ms. Edwards stated that the case has been closed and closed appropriately.

Mr. Smith asked Ms. Edwards if the board agrees to the settlement stipulation would this hold the board to agreeing that Mr. Welch had the qualifications for licensure. Ms. Edwards stated that the board would be acting on the settlement stipulation only. Dr. McNeill asked Ms. Edwards if there was anything preventing another case to examine Mr. Welch's application file.

Ms. Blackledge asked Mr. McCain if Mr. Welch was awarded a degree. Mr. McCain stated that he could not answer that question. Mr. McCain stated that the past case had been resolved and was closed with an order. Mr. McCain stated for the record that he did not have knowledge if Mr. Welch had the qualifications.

Dr. Scott asked Mr. Hurst if the board could assume that the Department followed up on verification of Mr. Welch's credentials. Mr. Hurst stated there was a closing order.

The board discussed opening another compliant against Mr. Welch. Dr. Scott stated anyone could submit a complaint to the Department.

After discussion by the board the following motion was made.

MOTION: Ms. Enos made a motion to accept the settlement stipulation in case number 2001-07153 with the change of requiring Mr. Welch's probation appearance be no earlier than 6 months from the entry of the order.

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

MOTION: Mr. Smith made a motion to approve the settlement stipulation in case number 2001-01856.

SECOND: Ms. Enos seconded the motion and it passed.

Mr. Pease opposed the motion.

The board asked Mr. Knap to follow-up on Mr. Welch's prior closed case to assure verification of education had been received by the Department. The board stated they still had concerns and wanted to be assured that Mr. Welch had a degree at the time he was approved for licensure. Ms. Edwards reminded the board that the board would have to review the laws and rules at the time Mr. Welch made application for licensure. Ms. Enos stated that the degree requirement was in effect when Mr. Welch applied for licensure.

The board asked Mr. McCain to provide the board with an official transcript. Mr. McCain advised the board for the record, that he did not believe their discussion of this matter was not proper at this time. Mr. McCain advised the board that Mr. Welch is completing

his law studies, and Mr. Welch stated he would not have been enrolled in graduate school until all your transcript are verified. Mr. McCain advised the board again that he believed that their discussion was improper.

Dr. McNeill stated that the information that was provided in the file did not have supporting documents to verify Mr. Welch had complied with the Final Order in the past case.

REPORTS

Chair Reports – Tom Scott

Dr. Scott reported for the record that the board was in the process of finalizing disciplinary rules and the rule will be noticed.

Dr. Scott thanked Ms. Enos for her participation on the board and that she will be missed.

Board Counsel Report – Barbara Edwards

Ms. Edwards advised the board that the rule regarding spouse exemption has been adopted and became effective October 13, 2004.

Ms. Edwards stated that the rule increasing the application fee to \$150 has been noticed and will be adopted as soon as possible.

Ms. Edwards stated that the disciplinary rule would be noticed soon.

Finance Report – Dawn Blackledge

Ms. Blackledge reviewed the June 30, 2004 Operating and Unlicensed Financial reports with the board. Ms. Blackledge noted that the balance included renewal fees and the balance was looking better.

Probable Cause Panel – Dr. Scott

Dr. Scott advised the board that the probable cause panel meeting had been cancelled. Dr. Scott asked Ms. Patterson to notify Dr. Kwader the meeting had been cancelled.

Prosecuting Attorney's Report – Eric Hurst

Mr. Hurst advised the board that his report was in their meeting materials and at this time there were no Geology cases.

Communications – Gabrielle Enos

Ms. Enos advised the board that the newsletter was still in draft format and asked members to submit articles.

The board discussed who would take Ms. Enos' place on the communications committee. After discussion Mr. Smith will replace Ms. Enos.

Executive Director – John Knap

Mr. Knap reviewed with the board the geology quarterly complaint report.

NEW/OLD BUSINESS

Dr. Schmidt addressed the board with a request. Dr. Schmidt advised the board that in the past he has proposed through the legislature that the Florida Official Rock be a Ocala Limestone, that the mineral be Calcite, and that the Fossil be the Eocene sea urchin Eupatagus antillarum.

After discussion it was the consensus of the board to support Dr. Schmidt's proposal. Dr. Scott asked Mr. McNeill to draft the letter supporting Dr. Schmidt's proposal. Dr. McNeill agreed to write the letter.

Correspondence from Richard Lee

The board reviewed Mr. Lee's request for a refund of the renewal delinquent fee. Dr. Scott stated that he knew Mr. Lee had been diagnosed with cancer and was not expected to live.

After discussion the following motion was made.

MOTION: Mr. Smith made a motion to approve Mr. Lee's request for a refund.
SECOND: Ms. Enos seconded the motion and it passed unanimously.

Mr. Knap advised the board that they should consider adopting a rule regarding revocation of licensure. Ms. Edwards agreed.

MOTION: Mr. Pease made a motion to request that Ms. Edwards draft a rule regarding revocation of licensure.
SECOND: Ms. Blackledge seconded the motion and it passed unanimously.

Discussion of ideas to assist DBPR with unlicensed activity enforcement

Mr. Knap advised the board if persons are not making complaints then there isn't anything that the Department can do.

Dr. Scott stated that when someone advises him of bad geology approaches or unlicensed activity, he advises him or her to make a complaint.

Ms. Enos asked if the Department was still holding investigator workshops. Mr. Knap stated he would check with the Department on the schedule.

Ms. Enos asked Mr. Knap if the unlicensed activity brochures were still available for printing. Mr. Knap stated he would check with Mark Reddinger.

Ms. Edwards stated she would include in the newsletter a disciplinary procedure article.

Dr. Schmidt stated that the professional community should get involved.

Ms. Patterson advised the board that the next meeting would be held January 19-20, 2005 in Pensacola. The board discussed allowing time at the meeting for the professional community to comment on the draft disciplinary rules.

The board discussed the January meeting location and after discussion, the board requested that the meeting be moved to the Orlando or Tampa area. Ms. Patterson stated she would let the board know as soon as she finalized the meeting arrangements.

The board asked Ms. Patterson to request that the draft rule be posted on the boards' web site.

There being no other business the meeting adjourned at 11:05 a.m.