

**Minutes of
The Florida Board of Professional Engineers
August 5, 2009 beginning at 1:00 p.m. and
August 6, 2009 beginning at 8:30 a.m., or soon thereafter
West Palm Beach, Florida
Part I**

- A. Call to Order, Invocation, and Pledge of Allegiance to the Flag
- B. Roll Call, Determination of Quorum, and Address Absences.

Board Members Present:

John C. Burke, P.E., Chair
Christian S. Bauer, Ph.D., P.E., Vice Chair
Jonathan Earle, Ph.D., P.E.
Paul Tomasino, P.E.
David Charland, P.E.
Zafar Hyder, Ph.D., P.E.
Nola Garcia, Public Member
Mary Young, Public Member
Bijay Panigrahi, Ph.D., P.E.

Board Members Absent:

H. Dann Wallis, P.E.
Paul Halyard, P.E.

Board Counsel:

Michael T. Flury, Assistant Attorney General

Staff members present:

Carrie A. Flynn, Executive Director
Zana Raybon, Assistant Executive Director
John J. Rimes, III, Chief Prosecuting Attorney
Wendy Gregory, Executive Assistant

Upon motion by Dr. Bauer, seconded by Tomasino, the absences of Mr. Wallis and Mr. Halyard were excused. The motion passed.

Mr. Burke noted that the Board did have a quorum.

- C. Introduction of guests and announcements as to presentations at a time certain

Roger Jeffery, FEMC Board Member
Ronald Milmed, FSEA

Emil Veksenfeld, P.E.
Robert Mackey, FSEA
Charlie Geer, FES

Mr. Burke recognized Mr. Emil Veksenfeld who is addressing the Board on a follow up visit regarding his concerns with application of the threshold building requirements to structures under renovation. From his first visit the Board suggested he go to the Florida Building Commission.

Mr. Veksenfeld discussed the rule related to existing buildings related to those inspections. Mr. Veksenfeld's was frustrated because no one wants to take responsibility for the issue. Existing buildings, which comply with the definition of threshold buildings, should comply with all requirements of section 553.79(5), F.S. This statute requires that a Special Inspector perform structural inspections of threshold buildings in accordance with structural inspection plans describing specific procedures and schedules. This statement should be recognized for mandatory inspection plans for existing threshold buildings. In Mr. Veksenfeld's opinion when work begins on existing structures it is not known initially whether structural engineering will occur. Because of this, no threshold inspection is required. Mr. Veksenfeld believes that this results in structures with less than adequate safety.

Mr. Rimes advised the Board provisions of Chapter 553 related to threshold buildings. The triggering requirement for the need of a special inspector can be read to mean that anytime any structural work is done on a structure meeting those height and width requirements, then a special inspection program should immediately be put together and made a part of the permitting process. The difficulty arises in that the special inspector law was written as a result of a class of new construction. It was not intended to address refurbishing of existing high-rise structures. What we have are a lot of work products in Florida which ultimately results in structural work being done on building that would meet the definition of the threshold building. When this occurs, is the engineer who does the first walk-through for what they are going to recommend to the association as to what needs to be done to refurbish are they required to prepare a threshold inspection plan. Mr. Veksenfeld believes the engineer should prepare the plan and the building department disagrees and does not apply the threshold plan. Mr. Rimes further stated this Board has no jurisdiction over Chapter 553, F.S. and they cannot require compliance by Board rule with no jurisdiction over the statute.

Mr. Charland asked if this matter could be discussed when this Board completes additional rules on threshold inspection?

Mr. Burke agreed and confirmed this will be reviewed at the September 15, 2009 Rules Committee meeting.

D. Approval of the Agenda

- #1. Approval of the Consent Agenda
(Items denoted with an asterisk are included in the Consent Agenda*)

Mr. Burke outlined the items under the Consent Agenda and asked for approval of the Consent Agenda.

Upon motion by Dr. Earle, seconded by Ms. Garcia, the Consent Agenda was approved. The motion passed.

E. Review and Approval of previous Board meeting minutes

#1. Minutes from the June 17-18, 2009 Board Meeting*

Approved under the Consent Agenda.

F. Committee Reports

#1. Applications Committee (**Next Meeting September 16, 2009**)

(John Burke, P.E., Chair; David Charland, P.E.; Nola Garcia; Paul Tomasino, P.E.; Paul Halyard, P.E.; H. Dann Wallis, P.E.)

a. Committee Chair's Report.

Mr. Burke noted his plan to create sub-committee in order to alleviate the potential problems with quorums at application review meetings.

#2. Educational Advisory Committee (**Next Meeting September 16, 2009**)

(Christian Bauer, Ph.D., P.E., Chair; Dr. Jonathan Earle, Ph.D., P.E.; Zafar Hyder, Ph.D., P.E.; Bijay Panigrahi, Ph.D., P.E., Mary Young; Melvin Anderson, Ph.D., P.E. [Consultant]; R. Gerry Miller, Ph.D., P.E. [Consultant])

a. Committee Chair's Report.

b. Email from Josef Silny regarding educational deficiencies

Mr. Silny has offered to counsel the applicant's on advanced courses to satisfy deficiencies in Mathematics and Basic Sciences. The Board was concerned with the additional cost to the applicant and the need for this additional step. Dr. Bauer suggested including language which explains to applicants they should not repeat courses.

Mr. Burke inquired of Dr. Bauer what method is used in the review process. Dr. Bauer stated with present procedures the applicant is advised of deficiencies and the requirement to take additional higher level courses repeat of courses previously completed. In some areas there must be a sequence of advanced courses. Dr. Bauer reiterated his belief that this information should be included in denial letters.

Mr. Burke recalled this as a recurring problem. He asked Dr. Bauer if the educational committee performs any articulation. Dr. Bauer indicated yes, they do some articulation. Mr. Burke then recalled the Board has revised or increased deficiencies after review of the evaluation. There is a problem sometimes as it involves interpretation when reviewing foreign applicants. Mr. Flury noted all foreign transcripts go through an evaluation by of the approved evaluators. Mr. Burke asked again, if the educational committee does any articulation of a Masters or Bachelor's to see if they comply with substantial equivalency. Dr. Bauer noted that we first send them for a formal evaluation. Further he noted that we need to make clear outline the deficiencies.

Ms. Flynn would advise Mr. Silny the Board's decision to decline the offered service of providing a preliminary evaluation of proposed courses for a fee.

Dr. Earle noted it would be helpful for the educational committee to make suggestions regarding courses when they review the files.

Dr. Bauer advised the Board of his receipt of an email from the College Board defining what CLEP score means. There have been questions for years as to how many credit hours are granted for a CLEP exam. CLEP has issued a document to confirm CLEP grants documentation by listing credit hours for certain items. It is their position the institution should determine the amount of hours for a CLEP exam. Dr. Bauer endorses the current policy which requires an institution to provide us with a document stating how many credit hours are awarded for CLEP exam.

Mr. Burke asked and it was confirmed our rules require a transcript confirming hours awarded. Dr. Bauer inquired if this was a rule or policy. Mr. Burke noted that everything we evaluate is driven by the transcript and that CLEP courses are no different.

Ms. Flynn inquired whether there is a benefit to have a short statement on CLEP and what is required. Dr. Bauer indicated his willingness to work with Ms. Flynn on this. Mr. Burke asked where the statement would be placed. Dr. Bauer indicated it should be placed on denial letters.

Mr. Burke directed this item be placed on the upcoming rules committee agenda. The committee can determine the need for a rule addressing options for satisfying educational deficiencies.

#3. Probable Cause Panel (**Next Meeting September 15, 2009**)
(David O. Charland, P.E, Chair, Henn Rebane, P.E., Paul Halyard, P.E.) (Alternate: John Burke, P.E.)

a. PCP Memo from July 14, 2009 Meeting*

Approved under the Consent Agenda

Ms. Flynn asked the Board if they like the additional information the PCP memo. The changes were well received by all members.

#4. FBPE Rules Committee (**September 15, 2009**)
(John Burke, P.E., Chair; David Charland, P.E.; Paul Tomasino, P.E.; Jonathan F. K. Earle, Ph.D., P.E., H. Dann Wallis, P.E.)

a. Committee Chair's Report.

Mr. Burke asked if arrangements were completed in such a way to ensure interested parties have the information to be discussed in the Rules Committee. Ms. Flynn confirmed Ms. Gregory's list of interested parties.

#5. FBPE Legislative Committee (**Next Meeting to Be Determined**)
(Paul Tomasino, P.E., Chair; Christian Bauer, Ph.D., P.E.; Mary Young)

a. Committee Chair's Report.

Mr. Geer confirmed his plan to notify Mr. Tomasino after the FES annual meeting to brief him on the outcome of any proposed legislative issues.

#6. Joint Engineer/Architect Committee
(John Burke, P.E., Chair; Zafar Hyder, Ph.D., P.E., Nola Garcia)

a. Committee Chair's Report.

No report.

#7. Structural Rules Committee
(David O. Charland, P.E., Chair)

a. Committee Chair's Report.

Mr. Burke asked Mr. Charland if he would have updated language for the September Rules Committee meeting. Mr. Charland indicated that he would have the language for September or the next scheduled Rules Committee Meeting.

Mr. Flynn asked Mr. Burke whether there was a need to add a place on the Agenda for the Joint Landscape Architect/Engineering Task Force.

Mr. Burke directed staff to add a #8 under Committee reports for the Landscape Architect Engineering Task Force updates.

G. NCEES
(John Burke, P.E., FBPE Liaison)

#1. News Release – **Puerto Rican court awards damages to NCEES in exam theft case**

Provided for informational purposes

#2. Letter from Steven Arndt, P.E., nominating Howard C. "Skip" Harclerode, II, P.E., for Treasurer of NCEES

Provided for informational purposes

Mr. Burke noted that Gene Dinkins was also running for Treasurer and suggested because Mr. Dinkins is in the Southern Zone this Board endorse his candidacy.

#3. Memo from Henn Rebane dated June 17, 2009 regarding actions by NCEES Board of Directors (See also contract with NCEES, attached as Exhibit G#4)

Provided for informational purposes

#4. Exam Administration Agreement between Florida Board of Professional Engineers and National Council of Examiners for Engineering and Surveying

Provided for informational purposes

- #5. Letter from Robert Whorton, IV, P.E. regarding candidate's failure to stop writing on the answer sheet when time was called during examination and letter to candidate along with the candidate's response.

Mr. Burke believed the Board should support the NCEES recommendation. A candidate must follow the rules or their examination results will not count.

Upon motion by Ms. Garcia, seconded by Dr. Earle, the Board accepted the recommendation to discount score. The motion passed.

Letter from Robert Whorton, IV, P.E., regarding exam irregularity along with the results of the investigation

Upon motion by Mr. Charland, seconded by Mr. Garcia the scores should be released to the two candidates based on the review of the investigative report and a determination of no irregularities. The motion passed.

H. Advisory Attorney's Report

- #1. Letter from Marjorie Holladay regarding Rule 61G15-19.004, F.A.C. requesting an update on the status of the rule

Mr. Flury explained the letters from Ms. Holladay with regard to this rule will be brought to the next Rules Committee meeting along with further changes to the rule. He will be bringing language regarding the issue of ranges for disciplinary actions. We are required to have a meaningful range of penalties but the ranges we have are related to certain violations that have a broader range; such as failure to perform a statutory obligation. We need a range of reprimand to revocation. This same issue has been brought to other boards. The original issues that were raised have been addressed. Subsequently, other issues have arisen.

- #2. Letter to Marjorie Holladay regarding Rule 61G15-19.004 responding to request for status update

See #1., above.

- #3. Letter from Marjorie Holladay regarding Rule 61G15-19.004, F.A.C. requesting additional information

- #4. Letter to Marjorie Holladay's requested change to Rule 61G15-37.001, F.A.C.

Mr. Flury explained this letter related to a technical issue. We have done a notice of change for this rule.

- #5. Memos from Melinda J. Wood, Paralegal Specialist regarding Rules 61G15-22.010 and 61G15-22.011 F.A.C., and Petitions for Variance & Waiver

Provided for informational purposes

#6. Rules Report

**BOARD OF PROFESSIONAL ENGINEERS
RULES REPORT
July 21, 2009**

Rule No.	Title	Develop. Published	Notice Published	Adptd.	Effective
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The following rules are **ON HOLD**:

61G15-19.004	Disciplinary Guidelines	3-7-08	8-8-08	(Notice of Change 4-3-09) (Tolled 10/28/08)	
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The following rules are **IN PROCESS**:

61G15-20.001	Definitions, Appl. For	8-1-08	7-24-09		
61G15-20.0015	Lic. By Endorsement,	8-1-09	7-31-09		
61G15-20.007	Dem. Of Subs. Equiv	8-1-08	7-24-09		
*61G15-22.001	C.E. Requirements	8-8-08	(Waiting for approved text)		
61G15-22.010	Qualifying Activities for Laws and Rules Req.	2-20-09	5-29-09	7-21-09	
*61G15-22.0105	Approv. of CE Courses in Laws and Rules	2-6-09	4-3-09		
61G15-22.011	Bd. Approv. of CE Prov.	8-1-08	6/5/09	7-21-09	
61G15-23.001	Seals Acceptable to the Board	7-24-09			
61G15-23.002	Seal, Signature and Date Shall Be Affixed	7-31-09			
61G15-31.001	General Responsibility	7-31-09			
61G15-31.002	Definitions	7-31-09			
61G15-31.003	Design of Structures Utilizing Prefabricated Wood Trusses	7-31-09			
61G15-31.004	Design of Cast-in-Place Post- Tensional Concrete Structural Systems	7-31-09			
61G15-31.005	Design of Structures Utilizing Precast and Prestressed Concrete Components	7-31-09			
61G15-31.006	Design of Structures Utilizing Open Web Street Joists And	7-31-09			

Joists Girders

61G15-31.007	Design of Pre-Engineered Structures	7-31-09		
61G15-31.008	Design of Foundations	7-31-09		
61G15-31.009	Design of Structural Steel Systems	7-31-09		
61G15-37.001	Perform. Stds. And Meas. Outcomes	8-1-08	7/10/09 (Notice of Change)	

The following rules are **ADOPTED**:

61G15-18.011	Definitions	1-30-09	2-20-09	6/02/09
61G15-21.009	Endorsement	8-1-08	(Repeal)	6/02/09
61G15-35.004	Common Requirements	1-16-09	2-6-09	5/06/09
61G15-23.002 .003	Elect. Seals, Signatures And Procedures	8-1-08	1-16-09	5/06/09

I. Executive Director's Report

#1. List of Applicants Requesting Retired Status*

Approved under the Consent Agenda

#2. Confirmation of contract with DBPR for fiscal year 09-10

Ms. Flynn discussed the additional requirements in the contract. The primary changes were in two areas. First, when we submit our Quarterly Reports, we will also send financial reports; and second, they removed any type of bonus plan for FEMC employee.

#3. Discussion on time set for PCP panel meetings

The time set for the September PCP Meeting will remain as noticed.

#4. August 2010 FBPE Board Meeting

Ms. Flynn asked the Board to consider setting their own date and location for the August 2010 meeting and not in conjunction with FES Annual meeting. She noted the issues with scheduling this year and the costs are exceeding what is allowed on meetings.

Mr. Geer advised that it was the hope of FES/FICE a large number of the Board and staff would stay over for the meeting, come to FES meetings and mingle with FES members. It is the one time Board Members and staff can mingle with 500 Professional Engineers. Dr. Bauer was in favor of continuing with the coordinated meeting.

Mr. Tomasino appreciated the issue of costs and space. For this reason the Board Meeting should not be held in conjunction with the Annual Meeting rather a representative of FBPE could be authorized to attend.

Mr. Tomasino asked Ms. Flynn if she had conferred with the Surveyor's Board regarding the dual seal issue. Ms. Flynn indicated she had sent an email but had not yet received a response. The Surveyor Board was being relocated and will now be with the Department of Agriculture as opposed to the Department of Business & Professional Regulation. She will follow-up with Mr. Cooner.

J. Assistant Executive Director's Report

#1. Update on Disaster Recovery Plan

Ms. Raybon indicated that she had nothing new to report on disaster recovery.

#2. Update on Records Administration

Ms. Raybon noted the purchase of a new scanner which allows us to digitally scan our records. We will be purchasing software to help staff search records and respond to public records request. Mr. Burke asked whether the scanning would allow more files to be removed from the Board office. Ms. Raybon indicated that scanning these records would allow for files to be removed. Ms. Flynn noted that there is one staff person dedicated to scanning of records.

Dr. Earle inquired about the ftp site which would be used in lieu of mailing our memory sticks. Ms. Raybon indicated while the site had been researched, due to budget constraints, it may be some time before it is instituted.

K. Chief Prosecutor's Report

Ms. Flynn formally announced that Mr. Rimes officially accepted the vacant position of Senior Prosecuting Attorney.

Mr. Rimes noted July Tomasi retired and Shannon McCoy will be taking over July's responsibilities.

#1. Non-Compliance Report

Mr. Rimes indicated there are three important issues. The first is the requirements while on probation to pay costs of project review and costs of investigation. Some respondents are not paying those fees. He will be charging these individuals with non-compliance with the final order and if a case is opened it will carry a recommendation of revocation.

Mr. Rimes voiced his concern as to how consultants are paid when performing project reviews. He would like to consider mandating payment up front for consultants. Payments are mailed to FEMC and it is forwarded to the consultants. The problem is if the cost is not paid, FEMC has pay. He explained FEMC isn't allowed to retain the payment of costs. It has to go directly to the trust fund.

Mr. Burke inquired whether a citation could be issued for non-payment. Mr. Rimes indicated yes this could be done if it was put into the Settlement Agreement and a rule change would need to be completed. Ultimately, you would want to retain your ability to go after their licenses for non-payment. A citation would not allow for this type of disciplinary action. Mr. Rimes believes going after these licenses will be the best way to get the attention and recover costs.

Ms. Flynn noted that this matter would be discussed in a Board Operations Committee Meeting.

#2. July Open Case Report

Provided for informational purposes

#3. 300 day report

Mr. Rimes discussed the report. The open case report is a redacted spreadsheet which gives no real information. For the older cases, he noted that it was his intent to provide more information to members. Provided to members were the names and a synopsis of the current status of the older cases. He further noted a significant portion of the cases will go away after the September 15th PCP Meeting.

#4. Legal Update

Mr. Rimes noted he has restructured the legal section to establish an investigative section, a litigation section and a final order section. It appeared there were overlapping jobs and the restructuring will address the issues.

#5. Final Order Adopting Settlement Stipulation; **FEMC v. Bombassaro**; Update on language placed in the Final Order accepting the stipulation

Mr. Rimes explained the reasons for including this Final Order as part of the agenda. There were concerns from the last Board Meeting on the disciplinary action taken in this case. To alleviate some of the concerns he included language from the minutes as to the serious nature of the violation and the actions to be taken if a repeated offence occurs.

#6. Chapter 2009-195, Laws of Florida, Section 2. – Related to Grounds for Discipline, Penalties, Enforcement

Mr. Rimes advised the Board on new provisions in Chapter 455, F.S. This section requires licensees who are convicted of a crime to report to the Department of Business and Professional Regulation. It must be done within 30 days of the effective date of the law. He suggested an article for the upcoming newsletter and website. All engineers should be informed. It will create the need for further changes to the disciplinary guidelines and discussion should take place in the next Rules Committee Meeting.

L. Chair's Report

#1. Email from Bill Coulbourne regarding request for Board Member to observe Florida Gulf Coast University

Mr. Burke explained the purpose for this invitation. The Board previously took part in all EAC/ABET visits if schedules allowed. Over past two or three years Board Members have declined to attend. This visit is for FGCU in Ft. Myers on November 2-3, 2009. Mr. Burke asked for a volunteer. Ms. Garcia indicated her willingness to observe the accreditation visit. Ms. Flynn would authorize the travel.

#2. Report on Consumer Complaint

Mr. Burke discussed a letter of complaint on a complaint filed with FEMC. The person who filed the complaint contacted her senator. The senator notified FEMC with questions regarding the speed at which the case was being handled. Legal did a poor job at keeping the complainant advised of the status of this case. The case was presented to PCP and staff was told to table it for additional expert review. Mr. Burke explained his involvement from the point of receiving a letter from the Senator expressing concerns with the legal process. He responded to the Senator regarding reorganization of legal and immediate focus on moving forward with resolution of the case. He wanted to advise the Board on the dissatisfaction and possible review of FEMC's process with timeliness of processing complaints.

#3. Discussion of Application & Educational Review Meetings

Mr. Burke explained his plan to divide the membership into pairs. We will have eight committees. It doesn't change anything, but if everyone leaves to catch a plane and we have a two man committee left, we still have a quorum.

Mr. Flury believed with two people reviewing a file and two votes required for denial. The items would be reviewed and ratified by the whole Board but we would have smaller groups to do the work.

Mr. Burke believed this plan offers some flexibility.

#4. Email with draft letter regarding Rule 62-341.417, F.A.C.

Mr. Burke recognized this information provided by Dr. Hyder on the Joint Professional Engineer/Landscape Architect Task Force.

Mr. Tomasino was appointed to the committee. The overall cost for the study was taken from FEMC's contracted funding. The \$80,000 previously taken for expenses associated with Accenture was reassigned by the Department to cover the costs for conducting the study. There is no provision for payment of travel, etc for attendees.

Mr. Burke noted Mr. Tomasino's concerns and his decision to withdraw from the committee. He further noted John Rimes agreeing to represent the Board. Mr. Rimes is located in Tallahassee he can attend the meeting and keep the Board advised.

M. Correspondence to the Board

- #1. Letter from Peggy M. White, Director, Department of Information Resources, St. Johns River Water Management District requesting review of methodologies for implementation of the use of PKI signatures using Adobe's Certified Document Signing service

The Board discussed the continuing request for this Board to approve certain systems as being in compliance with the electronic signing and sealing rule. Mr. Rimes advised the Board of his discussion with them as to proposed systems. They want comfort and assurance from the Board as to possible conflicts with the Board's rule.

Mr. Geer commented from a professional point of view. There are many different systems available and the user must determine if criteria of the rule is met by the selected system.

Mr. Rimes suggested the Board advise the district of the need to perform an analysis of their proposed system and determine if it complies with the Board's rule.

Mr. Mackey commented on the generic language in the rule. It should be the user's responsibility to comply with the rule. He does not think the Board should have to approve each type of system.

Mr. Burke called for a motion.

Upon motion by Dr. Bauer, seconded by Dr. Panigrahi, it was determined St. Johns River Water Management District should determine if their system complies with the rule. The motion passed.

- #2. Emails between staff and Jeremy Fletcher regarding application deadlines

Mr. Burke explained Mr. Fletcher's concern with the deadlines and process for filing taking the PE Exam. He not happy with the fact of requiring experience at the time of application and he had some suggestions on how to process applications and change deadlines for submitting applications. His main complaint is that most folks get out of school in May and because of our deadlines, they cannot get into the first exam after graduation. Mr. Fletcher was advised by letter of his opportunity to address this Board and he declined to attend.

Ms. Flynn explained we have a huge applicant population. The scheduling of these deadlines is set in order to allow the greatest number of candidates scheduled for examinations. She queried several states and all states contacted require experience at time of application and they have established dates for submitting applications.

Mr. Burke was not sure Mr. Fletcher understanding with filing of an application the experience stops at the time of submitting the application. Ms. Flynn confirmed with the large candidate population our office runs down to the wire on deadlines for receiving and processing applications. She further noted that Mr. Fletcher had not filed an application for examination.

Ms. Flynn will contact Mr. Fletcher and advise him of the Board's decision to leave all dates as presently established.

- #3. Email from George D. Delaney regarding potential changes to the Stormwater Quality Applicant's Handbook

Mr. Delaney was concerned with the proposed requirement in The Department of Environmental Protection Handbook which requires that geotechnical information (borings) compiled by a geotechnical engineer be incorporated in the civil plans with pertinent/relevant data, specifically on plan sheets and cross sections. Mr. Delaney did not believe he should sign and seal the geotech information. He asked if the Board agreed with statement of noting on the plans the geotech data is provided for information only and not covered by the civil engineer's certification, further noting the contractor should refer to the geotechnical engineer's report.

After a short discussion all Board members were in agreement with Mr. Delaney's statement. He should include statement on his plans "the geotech data is provided for information only and not covered by the civil engineer's certification, further the contractor should refer to the geotechnical engineer's report for required data".

An Educational Committee meeting with application review was held following Part I of the Board Meeting.

Part II Informal Hearing Agenda

Description of Educational Committee Process by Christian Bauer, Ph.D., P.E.

Prior to hearings, Mr. Burke asked that ratification of the applications reviewed on August 5, be reviewed and approved.

Upon motion by Dr. Bauer, seconded by Mr. Charland, the actions of the committees were ratified. The motion passed.

Dr. Bauer explained the responsibilities of the Educational Committee.

N. Informal Hearings on Denial of Application for Fundamentals Examination

- #1. Eduardo Marrero

Mr. Marrero was present and sworn in prior to addressing the Board.

Mr. Flury outlined Mr. Marrero's background. Mr. Marrero holds a BS in Civil Engineering from "Jose Antonio Echeverria" Higher Polytechnic Institute. His application for the Fundamentals Examination was denied for educational deficiencies. The Board reviewed the evaluation from Josef Silny and Associates dated April 06, 2009 to determine substantial equivalency to Rule 61G15-20.007, F.A.C. It was determined Mr. Marrero was deficient a General Chemistry course and deficient 1.50 hrs H&SS.

Dr. Earle moved to uphold the denial of the application. Dr. Bauer asked as to benefit to hold the file open to allow completion of the necessary courses. Ms. Flynn did not have a problem with holding the file if there was a time certain for having completed the courses and being approved by the Board.

Mr. Marrero indicated he will be taking classes in the Fall.

Dr. Earle amended his previous motion:

Upon motion by Dr. Earle, seconded by Dr. Bauer, Mr. Marrero's file will be held open until the February 2010 Board Meeting in order to allow him to complete a general Chemistry and Humanities and Social Sciences course. The motion passed.

O. Informal Hearings on Denial of Application for Licensure by Endorsement

#1. Bhanuvally Vasappa

Mr. Vasappa was not present at the Board Meeting.

Mr. Flury outlined Mr. Vasappa's background. He holds a BS from S.I.T Tumkur, Mysore University, he passed the FE exam in Mississippi in 1993, the Principles and Practice exam in Michigan in 2000 and he has evidenced four years of work experience. When submitting his application he was advised of the requirement of having an evaluation from one of the two approved evaluators. He did not agree with the requirement as he has previously secured an evaluation from ECE. Pursuant to his request, the file was presented to the Educational Committee. The application was denied for failure to submit a current evaluation from an approved evaluator

Upon motion by Dr. Earle, seconded by Dr. Bauer, the denial of his application was upheld. The motion passed.

#2. Jason White

Mr. White was present with his counsel, Edwin Bayo', Esquire. Mr. White was sworn prior to addressing the Board.

Mr. Flury outlined Mr. White's background. Mr. White holds a BS from Florida State University; he passed the FE exam in Florida in 2002; he acquired four years of experience applied and failed the Principles and Practice examination three times in Florida. The dates of examination were October, 2005, April 2006 and April 2007. He subsequently passed the Principles and Practice examination in Alabama and was licensed in Alabama in 2007.

With licensure in Alabama, he then applied with our Board for licensure by endorsement. His application was reviewed on September 17, 2008 and was denied due to his failing the examination three times since July 1, 2004. This requirement is set forth in Rule 61G15-20.0015 (3), F.A.C.

Mr. Bayo' addressed the Board with his concern over the present denial. Under Section 471.015, F.S. there are several provisions for endorsement. One provision is qualified to take the exam, has four years of experience and engineering degree. Two is to hold a license in another state. Mr. Bayo' believes by incorporating this additional term in the 3 time failure for licensure by endorsement, the Board eliminated the first provision of the statute. He further noted that the statute is not clear.

Mr. Bayo' suggested the Board consider leaving this matter open if leaning toward upholding the denial. This would allow time to have his client file a petition for variance & waiver of the rule due hardship and Mr. White's plan for completing the additional 12 hours of education.

Upon motion by Mr. Charland, seconded by Dr. Earle, this matter was continued. The motion passed.

P. Informal Hearings on Denial of Application for Principles and Practice Examination

#1. Brooke E. Ramage

Ms. Ramage was present and sworn in prior to addressing the Board.

Mr. Flury outlined Ms. Ramage's background. Ms. Ramage applied for the Principles & Practice Examination and her application was denied by the Board on 01/14/09 based on education. She holds a Bachelor Degree in Architecture from Louisiana State University and a Master of Science in Civil Engineering from the Georgia Institute of Technology. In order to be accepted into the examination she must articulate requirements of Rule 61G15-20.007, F.A.C. Ms. Ramage submitted an evaluation of her transcripts to supplement her initial application. There were educational deficiencies.

Ms. Ramage discussed her education. She was requesting the Board grant her credit hours for work performed as part of her Master's program.

After discussion the following action was taken.

Upon motion by Mr. Charland, seconded by Dr. Earle, this hearing was continued to allow Ms. Ramage an opportunity to seek a revised evaluation. The motion passed.

#2. Ronald W. Rogers

Mr. Rogers was present and sworn in prior to addressing the Board.

Mr. Flury outlined Mr. Rogers's background. Mr. Rogers applied to sit for the Principles & Practice examination and his application was denied by the Board on 03/18/2009 for failure to evidence the required four years of experience. Mr. Rogers was determined to be lacking 12 months of the required 48 months of experience. He submitted an Election of Rights form to have an Informal Hearing. Mr. Rogers requested the Board consider recognition of construction management experience completed from 1997 when he left Georgia Tech to return to the University to complete his degree in engineering in 2005.

Mr. Burke believed if Mr. Rogers appeared before the Board to discuss the nature and length of work there may be a basis for approving the application.

Mr. Rogers briefed the Board on establishing his company when he was twenty five years old. The types of projects he performed were small subdivision roads. The designs often left a lot open to interpretation. Many decisions had to be made on site. His experience incorporated starting from bidding the work, figuring out what was required, laying it out and then performing the work.

Upon conclusion of presentation, the following action was taken.

Upon motion by Ms. Garcia, seconded by Dr. Hyder, the Board granted Mr. Rogers 12 months of experience for work done prior to completing his degree. With this action his application is approved for the Principles and Practice examination. The motion passed.

Q. Formal Hearings on Denial of Application for Licensure by Endorsement

#1. Richard DiCesare

Mr. DiCesare was not present at the hearing.

Mr. Flury briefed the Board on Mr. DiCesare's background. Mr. DiCesare holds a Technology Degree from Mohawk Valley Community College in Utica, New York. He passed the FE in New York in April 2003 and the PE in April 1997. Mr. DiCesare's application was denied because he does not hold an approved degree nor does he meet any of the provision to waive a requirement of degree.

Upon motion by Dr. Earle, seconded by Dr. Bauer, the Board upheld the denial of Mr. DiCesare's application for licensure by endorsement. The motion passed.

Requested Appearance

#1. Clinton W. Finstad

Mr. Finstad was present and sworn in prior to addressing the Board.

Mr. Burke asked him to address the letter that was provided as part of his proof of work experience. Mr. Finstad indicated that the letter was a complete surprise to him and that it was mortifying and upsetting and something he takes very seriously. The incident occurred 20 years ago. He does not believe any wrongdoing occurred while working with this gentleman and continues to work with him currently.

Upon motion by Mr. Tomasino, seconded by Ms. Young, the Board approved Mr. Finstad's application for examination. The motion passed.

Part III Disciplinary Hearings

Description of Disciplinary Process by John C. Burke, P.E., Board Chair

Mr. Burke outlined the disciplinary process as it relates to filing a complaints, review by legal, presentation Probable Cause Panel, procedures followed after panel's meeting and appearance before the Board. He noted members of the panel are not allowed to participate in the hearing at the time of appearance before the Board..

R. Settlement Stipulations

#1. Gildart, David, P.E.
PE 57456
FEMC Case Number: 2006058732
Represented by: Robert Simon, Esquire

Probable Cause Panel: Rebane, Seckinger

Mr. Gildart was not present at the Board Meeting. Mr. Rimes explained that a stipulation for continuance had been entered into by both parties.

Upon motion by Dr. Bauer, seconded by Dr. Earle, the case was continued to the October 15, 2009 board meeting in Jacksonville. The motion passed.

#2. Malone, Roger, P.E.
PE 56496
FEMC Case Number: 2005014415
Represented by: Edwin Bayo, Esquire
Probable Cause Panel: Rebane, Seckinger

Mr. Malone was present with his counsel Mr. Ed Bayo'. Mr. Malone was sworn prior to addressing the Board.

Mr. Rimes outlined the facts of this case. This investigation was predicated on a complaint filed by a licensed professional engineer, who alleges that the subject signed and sealed plans for the New Flagler 6-12 School in Palm Coast, Florida being constructed for the Flagler County School District. There were major structural engineering deficiencies. According to the complainant, the subject was an employee for Gibraltar Design, which at the time of the contract in 2003, held a certificate of authorization from the Florida Board of Professional Engineers (CA 7728, now null & void), as well as a Certificate of Authorization from the Florida Board of Architecture (AA 2911, now delinquent). The complainant's firm, Structural Engineers Group, was contracted by the school board to review and redesign the project.

The PCP Recommendation was \$5,000.00 administrative fine (\$5,000.00 per count for (1) count); costs of \$3,337.50; suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: the current clients he's performing work for, and who comprises his staff.

The stipulation calls for dismissal of items contained in Paragraphs 4C, 4E, 4G & 4H of the AC. a reprimand; \$5,000.00 administrative Fine (\$5,000.00 per count for (1) count); costs of \$9172.00; Board approved course in Engineering Professionalism and Ethics & study guide; within 1 year of entry of Final Order; when subject recommences practice in Florida, he is required to notify the Board & then Mr. Malone agrees to imposition of whatever terms may be set for a Project Review determined by the as appropriate at the time; appearance before the Board on two (2) occasions initially to answer questions relating to this case then at time of recommencing practice to explain: the current clients he's performing work for, composition of his staff and scope of practice.

Mr. Bayo' addressed the Board on Mr. Malone's engineering background. He confirmed Mr. Malone's relocation to another state with no plans to return to the State of Florida. He noted, for the record, no subsequent complaints against his client.

Upon motion by Dr. Bauer, seconded by Dr. Earle, the Settlement Stipulation was accepted. The motion passed.

Mr. Burke asked Mr. Bayo' if there was a civil suit. Mr. Bayo' indicated there was litigation and Mr. Malone had to pay 1/7 of the total which is approximately \$750,000.

Mr. Malone briefed the Board on the company and structure. The firm was based in Jacksonville with a staff of four engineers and technicians who worked with him on the project. He was the engineer of record and they were under his responsible charge. Review of documents was his responsibility.

Mr. Burke asked what Mr. Malone has learned from this experience. Mr. Malone confirmed his understanding for second and third reviews and he can't depend on those working for him to assume his responsibility as engineer of record.

Mr. Bayo' asked if the time frame for payment of the fine could be changed extended to 90 days to assist the respondent.

Upon motion by Dr. Earle, seconded by Ms. Garcia, the Settlement Stipulation was amended to allow payment of fines and costs within 90 days of the Final Order. The motion passed.

- #3. Tan, Seng-Chai, P.E.
PE 32930
FEMC Case Number: 2007056560
Represented by: Edwin Bayo, Esquire
Probable Cause Panel: Rebane, Charland, Halyard

Mr. Tan was not present at this hearing, he was represented by counsel, Edwin Bayo'.

Mr. Rimes stated this investigation was predicated on the receipt of a complaint filed by a professional engineer in Illinois. The engineer states he contracted with Tanco Construction Co., Inc., to build a house and bath house in Palm Beach County, Florida. He alleges the Engineer of Record, Seng-Chai Tan, PE, would not seal drawings for complainant's review. This complaint was originally closed as legally insufficient on 11/14/07 because it appeared to be a contract dispute between the complainant and the general contractor. The case was re-opened on 12/21/07 at the direction of FEMC Chief Prosecutor Patrick Creehan after additional information was received from the complainant.

The Probable Cause Panel Recommendation is Reprimand; \$1,000.00 administrative fine (\$1,000.00 per count for (1) count); and costs of \$3,131.83, Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date. Upon resumption of engineering practice in Florida: Subject will make an appearance before the Board, following appearance: Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; and study guide.

The Settlement Stipulation calls for withdrawal of the specifications set forth in Paragraphs 4A, 4D, 4E, 4G, 4J and 5 of the Administrative Complaint and Dismisses all charges related to those specifications, reprimand; and costs of \$3,131.83, Suspension of licensure, stayed if costs paid

within 30 days of Final Order date. Upon resumption of engineering practice in Florida: Subject will make an appearance before the Board, following appearance: Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; and study guide. The second year of Probation will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was “favorable” (defined in the Stipulation as being free of any material deficiencies).

Mr. Burke asked why Mr. Tan was not in attendance. Mr. Bayo’ indicated Mr. Tan moved to Thailand. Mr. Tan has not been to the United States in two years with exception of one visit to retain Mr. Bayo’s services.

Mr. Burke commented on this case. The complainant is an engineer in Indiana and he did not understand the contractual relationship with regards to the engineer not working for Tanco. There was some negligence and he had concern with removing the fine from the penalty.

Mr. Bayo’ explained due to the amount of costs involved the fine was eliminated. He further noted this has been a fairly trying case for Mr. Tan, trying to defend the case and deal with it from the other side of the world. He indicated if the owner or the contractor had pointed out the problems, he could have addressed those issues. He was never given the opportunity. Mr. Bayo’ indicated his client’s willingness to give up his license and he believes Mr. Tan will never return to Florida as part of his practice.

Upon motion by Mr. Tomasino, seconded by Dr. Earle, the stipulation was accepted. The motion passed.

#4. Zaleski, James, P.E.
PE 51544
FEMC Case Number: 2008045140
Probable Cause Panel: Rebane, Charland, Halyard

Mr. Zaleski was present and sworn in prior to addressing the Board.

Mr. Rimes stated this investigation was predicated on the receipt of a complaint from a homeowner of property located at Lot #5 Carr Lane, Tallahassee, alleging Mr. Zaleski provided soil boring tests. Apparently, after the house was constructed it began to show structural cracking. A subsequent engineer was engaged to provide more soil borings and discovered pipe clay on site. Complainant alleges Mr. Zaleski falsified the soils report and “has reason to believe that the soil borings were never conducted, even though a report was issued and signed by Mr. Zaleski.”

The Probable Cause Recommendation was Reprimand; \$2,000.00 administrative fine (\$2,000.00 per count for (1) count); costs of \$1,112.00; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what steps he plans to take to improve the quality of his practice.

The Settlement Stipulation calls for a Reprimand; \$2,000.00 administrative fine (\$2,000.00 per count for (1) count); costs of \$1,112.00; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what steps he plans to take to improve the quality of his practice. The second year of PROBATION will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was “favorable” (defined in the Stipulation as being free of any material deficiencies).

Mr. Rimes noted members had received a letter from one of the complainants expressing their concern.

Mr. Burke asked Mr. Zaleski to explain how he is going to prevent this from happening again.

Mr. Zaleski advised the Board of his primary job which is working for a site contractor in Tallahassee. He performs modifications to plans, as well as densities for FDOT, and he limits this as his area of practice. There are other types of side jobs that he will not do anymore. He had worked for this man for over seven years and has never had a complaint. The superintendent filed the complaint.

Upon motion by Ms. Garcia, seconded by Dr. Panigrahi, the Settlement Stipulation was accepted. The motion passed.

- #5. Jones, Fred, P.E.
PE 54476
FEMC Case Numbers: 2004006324, 2004006421, 2004044076,
2005030423, 2005031032, 2005045832, 2005026133, 2005062011,
2006008843, 2006067086, 200407048
Represented by: Dominic MacKenzie, Esquire
Probable Case Panel: Matthews, Tomasino, Seckinger, Hogenkamp,
Burke

Mr. Jones was not present at the Board Meeting.

Mr. Rimes explained the facts of the cases. Due to the number of cases involved in this matter, the Board is directed to the various Investigative Reports and or Administrative Complaints related to each case contained in RED Books 3-5 for a recap of the facts underlying the charges against Mr. Jones.

Procedurally, it appears that these matters have followed a lengthy path to this date. Probable Cause was found on several occasions independently as to the cases listed herein and various Administrative Complaints were issued.

By August 2008 & December 2008 all of the cases had been referred to DOAH in two batches. Subsequent thereto, the parties agreed to a form of informal dispute resolution, whereby, each agreed to the designation of a single expert acceptable to both sides to review the cases and the underlying facts and various expert opinions produced by both parties and rendered his opinions and advice as to the validity of all of the charges. After a several day discussion and meeting in

June 2009 attended by all counsel and Mr. Jones, Mr. Jones determined that the relinquishment of his license would be in his best interest. As a result, a Stipulation reflecting that fact was entered into on June 18, 2009.

The Probable Cause Recommendation was various at different stages of the investigations. In light of the proposed disposition, however, it appears the Panel recommendations, when looked at in the harshest light possible, are met by the terms of the Stipulation.

The Settlement Stipulation calls for voluntary relinquishment of license with agreement never to reapply.

Mr. Charland asked about the costs for investigating the various cases and asked if FEMC would recover any of those costs. Mr. Rimes confirmed approximate costs to FEMC of \$50,000. The costs will not be reimbursed.

Upon motion by Mr. Charland, seconded by Dr. Bauer, the Board accepted the Settlement Stipulation. The motion passed.

S. Default

- #6. SCA Engineering & Consulting Inc.
CA 6693
FEMC Case Number: 2004036818
Probable Cause Panel: Rebane, Charland, Halyard, (Original panel) Matthews, Burke, Seckinger

SCA Engineering & Consulting, Inc. was not represented by counsel or employee for the hearing.

Mr. Rimes explained this investigation was predicated on information from a Florida engineer who responded to a job advertisement from the Subject. Complainant's questions about the nature of the job led him to the conclusion Subject corporation was issuing reports in mass quantities with the seal and electronic signature of an engineer who had not produced or prepared the reports.

Investigation obtained visual confirmation of an engineer's seal left with an unlicensed staff employee, who then provided a recorded statement on the employee's use of the seal and placement of an electronic signature on reports not been reviewed by an engineer. The employee would then send the reports to clients.

On November 5, 2005 Probable Cause was found and an Administrative Complaint was issued. The PCP's recommended penalty was a Reprimand; \$10,000.00 administrative fine; 1 yr. suspension; 2 yrs. probation after the period of suspension; costs; and FEMC Investigator will conduct periodic site visits.

A Hearing at DOAH was requested and during that proceeding a Stipulation was entered into between the FEMC prosecutor and SCA. This Stipulation, calling for a \$5,000.00 administrative fine and costs of \$153.45, was not presented to the Board but the then prosecutor was apparently

directed to require that the Stipulation would only be acceptable to FEMC if SCA gave up its CA in addition to the fine & costs.

The case was then referred to outside counsel in early 2007 where it remained until reacquired by present counsel in September 2007. The present FEMC prosecutor then contacted SCA's counsel to try to resolve this case. Former SCA counsel notified FEMC in late 2007 that SCA was no longer in existence and had ceased operations.

An Amended Administrative Complaint was issued on March 19, 2009 which Respondent received on June 11, 2009. No response was filed within the 21 days required by the notice and election of rights. As a result, a Motion For Determination that Respondent has waived respondent's right to an Administrative Hearing under the Provisions of Section 120.569, Florida Statutes, and the Entry of a Final Order as a Result of such Waiver was filed on May - 2009. No response was made to the Motion. The case is therefore being submitted to the Board upon the above Motion for Determination.

The PCP Recommendation was revocation of the CA.

Mr. Rimes then explained the first action necessary was to act on his Motion for Determination that Respondent has waived his right to an Administrative Hearing.

Upon motion by Dr. Bauer, seconded by Ms. Garcia, the Board determined that Respondent waived his right to an Administrative Hearing. The motion passed.

Mr. Rimes then indicated the Board would need to accept or reject the Allegations of Fact and Conclusions of Law contained in the Administrative Complaint.

Upon motion by Dr. Bauer, seconded by Dr. Earle, the Board accepted the Allegations of Fact and Conclusions of Law contained in the Administrative Complaint.

Mr. Rimes indicated the Board should determine the penalty. His recommendation was to revoke the Certificate of Authorization and impose a \$10,000 fine.

Upon motion by Dr. Earle, seconded by Dr. Panigrahi, the Board imposed revocation of Certification of Authorization #6693 and a fine of \$10,000. The motion passed.

After learning that the maximum fine could be up to \$15,000 the following motion occurred:

Upon motion to amend his previous motion by Dr. Earle, seconded by Dr. Panigrahi, the Board voted to increase the fine to \$15,000 and to revoke Certification of Authorization #6693. The motion passed.

T. Old Business

U. New Business

Mr. Burke indicated that there had been a request made by Ms. Lilly Larson to address the Board related to her concerns.

Ms. Larson discussed the condominium association of which she is a member. Over time, these condominiums must have repair due to age, hurricanes, etc. Most of the individuals living in these homes are older people who have a difficult time understanding what is involved in repair of buildings. They are constantly taken advantage of by engineers, contractors and they have no understanding of the building department process in permitting. She suggested a form of photo ID associated with the engineering licenses. She discussed revising rules to only allow for two exam failures instead of the current three time failures.

Ms. Larson upon completion of her presentation was advised to file a complaint with the Board on any engineer that may be involved in these types of situations.

- V. Public Forum
- W. Community Involvement
- X. Adjourn

John C. Burke, P.E.
Board Chair