

STATE OF DELAWARE



**DELAWARE ASSOCIATION OF PROFESSIONAL ENGINEERS**  
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September 17, 2015

**MINUTES – COUNCIL MEETING, September 9, 2015**

A meeting of the Council of the Delaware Association of Professional Engineers was held on Wednesday, September 9, 2015, in the offices of the Association, New Castle, Delaware.

President Medlarz convened the meeting at 3:04 p.m.

Council Members Present:	D. Barbato, P.E.	J. Ludman, P.E.
	C. Balascio, P.E.	C. McAllister, P.E.
	W. Balascio, P.E.	H. Medlarz, P.E.
	M. Lennon, P.E.	E. Retzlaff, P.E.
	M. Lester, P.E.	T. Thomson, P.E.

Council Members absent:	S. Gharebaghi, P.E.	-	excused
	R. Hayden, P.E.	-	excused
	R. Smith, Esq.	-	excused
	J. Tracey, Esq.	-	excused
	R. Wheatley	-	excused

Staff present: P. Abshagen

DAG present: Catherine (Terry) Hickey, Esq.

The Roll call was taken and a quorum was declared.

**Open Forum**

In attendance were Patrick McGrory, Esq., and his client, Gregory Scott, P.E. of Scott Engineering.

**Election of Council Officers**

The slate of officers presented to Council for the 2015/2016 Council year:

President	-	D. Barbato, P.E.
Vice President	-	T. Thomson, P.E.
Secretary	-	S. Gharebaghi, P.E.
Treasurer	-	C. McAllister, P.E.

Motion by C. Balascio, seconded by Lester, the nominations for Council officers be closed. Approved unanimously.

Motion by Medlarz, seconded by C. Balascio, the 2015/2016 slate of Council officers be approved. Approved unanimously.

### **Minutes of the August 12, 2015 Council Meeting**

Council reviewed the Minutes of the August 12, 2015 Council meeting and recommends approval as submitted.

*Motion by McAllister, seconded by Thomson, Council approve the Minutes of the August 12, 2015 as submitted. Approved unanimously.*

### **D.A.G. Report**

- Gregory Scott Case #10/087 -- DAG Hickey summarized the Hearing Panel Decision on the allegations of Scott acting incompetently in engineering and misrepresenting his capability in the Knollwood project.
  - Substantial evidence was presented to support the allegations.
  - State rested its case
  - Motion filed to dismiss by Scott
  - State objected/motion to strike
    - Hearing Panel had authority to grant motion to dismiss (inherent to look at motion under the APA and due process)
  - Motion to strike was denied
  - Findings of Fact were based on evidence presented
    - State had not met its burden of proof
      - Scott was competent to provide the services
      - Regarding misrepresenting his capability – clear evidence of what the developer was to get was not provided
  - Public deliberations were held and written decision finalized
    - State provided motion to re-open the case with new evidence
    - Motion to re-open the case was denied

*Motion by W. Balascio, seconded by C. Balascio, Council approve the Hearing Panel's Decision.*

*Approved: C. Balascio, W. Balascio, D. Barbato, M. Lennon, J. Ludman*

*Recused: M. Lester, C. McAllister, H. Medlarz, E. Retzlaff, T. Thomson*

*Motion carried.*

*(Guests McGrory and Scott were excused)*

- Matthew Szayna Case #13/099 – DAG Hickey summarized the Hearing Panel Decision on the allegations of unlicensed practice of engineering for Chubb Insurance Company, wherein a Cease & Desist Order was issued. Stipulation of facts were provided in a written submission.
  - Szayna claimed in his agreement with Chubb he acted as an employee, and he did not provide engineering services for the general public.
  - He also claimed his report was for expert testimony.
  - The stipulation of facts in this case represents the findings of facts.

- Szayna engaged in the unlicensed practice of engineering when he submitted his report.
- Argument was presented that this reading of the statute was too narrow.
- No evidence was presented that his report was to be used as expert testimony, nor that he was an employee of Chubb.

*Motion by Retzlaff, seconded by Lester, Council approve the Hearing Panel's Decision.*

*Approved: D. Barbato, M. Lennon, M. Lester, J. Ludman, H. Medlarz, E. Retzlaff*

*Recused: C. Balascio, W. Balascio, C. McAllister, T. Thomson*

*Motion carried.*

## **Committee Reports**

### **Executive Committee**

The Executive Committee met just prior to the Council meeting, therefore, a written report is unavailable. Items discussed at Executive Committee meeting will be covered under the appropriate Committee reports.

### **Financial Report**

Finances for the first four months (33%) of this fiscal year reflect income has reached 49% of projections; and expenses 27%. Income category #435 (penalties) continues to exceed projections.

Audit for fiscal year 2014/2015 has been completed by Barbacane & Thornton. Awaiting draft report.

Motion by Thomson, seconded by W. Balascio, Council accept the Finance Report subject to audit. Approved unanimously.

### **Employee Benefits & Compensation** -- No report.

### **Law Enforcement/Ethics Committee**

Committee met on September 2, 2015 and discussed:

- DNREC – Class B design for lift station/gravity on-site wastewater systems MOU under review by DNREC.
- University of Delaware/MOU – University has signed the MOU and is awaiting Council action.
- Committee Education Program -- Committee member Diaz continues to seek committee input for agenda topics. DAG Jarosz has provided some feedback.
- NCEES Annual Meeting LE Forum -- Investigative approaches from other boards, as well as professional training for investigators and interviewers were discussed. With the advisement that DAG will not routinely attend committee meetings, professional training could certainly assist committee members in their investigations.
- Committee discussed the future role of the DAG, as she will no longer attend the monthly meetings. DAG Jarosz will expect the complete investigative package at the conclusion of an investigation. (She is available for questions during the investigation.)

- DAG also discussed the differences between negligence, gross negligence and the standard of practice.
- Committee is recommending the closure of 3 cases.
- Committee is recommending Council approval of the MOU with the University of Delaware.

*Motion by Thomson, seconded by Lester, Council approve the closure of the three (3) cases listed on Exhibit A of the committee's report. Approved unanimously.*

*Motion by Thomson, seconded by McAllister, Council approve the University of Delaware MOU executed by the University. Approved. (C. Balascio – Recused)*

### **Examining Committee**

The Executive Committee reviewed the report of the Examining Committee's meeting of August 26, 2015. Forty-three (43) individual applications for licensure were reviewed and confidential recommendations made for Council action consisting of **28** applications for **comity**; **1** re-application; and **14** applications for examination. The Committee also reviewed **4** applications for **Certificate of Authorization**.

*Motion by C. Balascio, seconded by Lester, Council approve the Committee's recommendations as noted on Exhibits A1-A2 of the committee's report dated August 28, 2015. Approved unanimously.*

### **External Affairs Committee**

- JAC meeting to be re-scheduled.
- ASCE Crab feast takes place on September 15th. DAPE's newly licensed engineers will be presented with their certificates in a ceremony at this event.

### **Facilities Committee** -- No report.

### **Government Affairs/By-laws Committee**

Governor has signed SB #86 (legislation to clarify the voting eligibility of inactive and retired members) on September 3, 2015.

### **Public Information**

P. Abshagen reported that the local DAPE membership was advised that speakers were needed for the Laboratory for Learning program that has re-started this month. Many DAPE members immediately responded indicating their interest in participating.

### **Ad-Hoc/Law Revision Committee**

- Decoupling PE experience from exam -- This discussion was tabled.
- Progressive engineering experience – Discussion to follow.

### **Correspondence** -- None

## **NCEES**

- Annual meeting representatives: C. Balascio, W. Balascio, T. Thomson, C. McAllister, P. Abshagen.
- Annual meeting discussions included:
  - NC Dental Examiners Supreme Court decision
  - CPC – the various ways states handle audits, exemptions, etc. & the CPC registry available to all
  - Changes to the Model Law
  - Continued discussions on decoupling exam and experience
  - Continued discussions on PhD's licensing without testing

## **Old Business** -- None

## **New Business**

- President Barbato is working on Committee Chair assignments
- Current Committee Chairs should report on charges and any recommended new charges
- University of Delaware – Council member Lester reported she will be speaking with the Senior Design class

Next meeting is scheduled on **Wednesday, October 14, 2015**, in Kent County.

Meeting adjourned at 4:42 p.m.

/pa