

Board for Professional and Occupational Regulation Meeting

MINUTES

The Board for Professional and Occupational Regulation met on Monday, November 17, 2003, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. The following members were present for all or part of the meeting:

Raynard Jackson, Chair
Keela Boose-Jackson
Julie M. Clifford
Maxime A. Frias
Susan T. Ferguson
Ronald Lushbaugh
Dana Martin
Thomas J. Meany, Jr.
Leroy O. Pfeiffer, Sr.

Board members absent from the meeting were:

None

Also present for all or part of the meeting were:

Louise Fontaine Ware, Director
Sandra Whitley Ryals, Chief Deputy Director
Karen O'Neal, Deputy Director for Regulatory Programs
Mary Broz, Communications Director
Mark Courtney, Executive Director/Board Administrator for BPOR
Eric Olson, Executive Director, Contractors
Kim Freiberger, Contractors Board Administrator
Janel Hoßler, Health, Safety, and Security Intern
Judy Spiller, Executive Secretary

Chairman Jackson called the meeting to order at 10:10 a.m., noting that a quorum was present.

Call to Order

Mr. Martin moved to approve the agenda and Mr. Pfeiffer seconded the motion, which passed unanimously.

Agenda
Approval

Chairman Jackson asked that the Board approve the minutes of the June 2, 2003, meeting. Mr. Martin moved to approve the minutes, and Mr. Pfeiffer seconded the motion. The minutes were approved unanimously.

Minutes
Approval

Mr. Courtney explained that each speaker was allowed five (5) minutes.

Public
Comment

John Simmers, Manager of the Photogrammetry program at the Virginia Department of Transportation (VDOT), who spoke on October 7, 2003, noted that a letter from Commissioner Philip A. Shucet was sent to Director Ware and Executive Director Mark Courtney, endorsing the use of Photogrammetry.

Bill Sirine, former member of the APELSCIDLA Board and practicing land surveyor in the Virginia Beach area for more than 30 years, also spoke at the October 7, 2003, BPOR meeting. He stated that the use of Photogrammetry was a compelling issue, as it concerns the health, safety, and welfare of the citizens of the Commonwealth and was long overdue. When Photogrammetry was first developed, it was used as a planning tool, but it has developed into a design tool. Mr. Sirine pledged his support and willingness to work toward the legislative effort for Photogrammetry, should the Board support its use.

Chairman Jackson reminded board members to put the meeting dates for 2004 on their calendars:

**Board Meeting
Dates for 2004**

March 1, 2004
June 7, 2004
September 20, 2004
November 15, 2004

Director Louise Ware said the Department's complaints concerning Hurricane Isabel have been running 12-15 percent of total complaints. DPOR is working on two large cases regarding selling of certifications for Asbestos workers and Carver Memorial Park Cemetery in Suffolk.

**Louise Fontaine
Ware,
Director's
Report**

Communications Director Mary Broz and Deputy Director for Enforcement James L. Guffey worked on a grant from Criminal Justice Services in the amount of \$18,000 with a 25 percent agency match in the area of home improvement fraud and assistance for older Virginians. The grant consisted of advertisements in 12 weekly, daily, and regional newspapers, which received positive impact from those affected following Hurricane Isabel. Ms. Broz also developed a bi-lingual palm card and a pamphlet telling seniors what they should know "Before Hiring a Contractor." A dry-erase board has been produced with the same information, and a 14-page booklet, on what to know before hiring a contractor, based on a similar booklet in California, was mailed to TRIAD groups, local building officials, and AARP. Groups are asking for more printouts of these documents.

Director Ware stated that Ms. Broz has also been working to make DPOR's website more user friendly, particularly in the area of regulant lookup, now called license lookup.

Director Ware acknowledged the awards won by DPOR employees at the

CLEAR Conference in September:
James L. Guffey, Deputy Director for Enforcement
Lifetime Achievement Award

Ernie Atkins, Tidewater Criminal Investigator
Investigator of the Year

Bonnie Rhea Adams, Director of Administrative Proceedings
President-Elect for 2004

Chief Deputy Director Sandra Whitley Ryals reported that the Department had been working for the past year and a half to develop an internship program. Chief Deputy Director Ryals introduced Janel Hofler, the intern for health, safety, and security for the agency. Ms. Hofler is in the Public Administration Master's program at Virginia Commonwealth University (VCU) and is serving 10-20 hours a week in an unfunded internship. She has interviewed staff, held focus groups, and is conducting research to develop a comprehensive health and safety program at DPOR.

**Sandra Whitley
Ryals, Chief
Deputy
Director's
Report**

Chairman Jackson asked about the funding for interns, and Director Ware replied that she is looking for ways DPOR can compensate interns in lieu of paying them, possibly covering the charge for the college course the intern is taking during the internship.

Mr. Courtney handed out two papers: p. 85 of the transcript of Bill Sirine for October 7, 2003, correcting his statement, and the correspondence from Commissioner Philip A. Shucet of the Virginia Department of Transportation. He explained that the Photogrammetry study had been conducted according to DPOR's study methodology with public hearings held in Richmond, Chesapeake, Arlington, and Roanoke. The report contains a summary of all the comments. Chairman Jackson said the Board's charge was to determine if DPOR should license Photogrammetrists. Mr. Courtney said the Board should either adopt or amend the report, or reject it.

**Mark Courtney,
Executive
Director/Board
Administrator
for BPOR**

Mr. Meany moved to adopt the report's recommendation with the amendment that "licensure of Photogrammetrists as land surveyors would still be considered as one of the possible options." Ms. Boose-Jackson seconded the motion. Discussion followed with Director Ware saying she would report the Board's decision to the APELSCIDLA Board at the next meeting and request that all interested parties work together in the legislative effort.

Chairman Jackson called for the vote which was unanimous to adopt the report with the amendment that licensure as a land surveyors would still be considered as one of the possible options.

The second Study of the Utility and Validity of Voice Stress Analyzers (VSA) was presented to the Board. Executive Director Eric Olson and Board Administrator Kim Freiberger were responsible for the report. Deputy Director for Regulatory Programs Karen O'Neal circulated three papers to board members: a copy of the current polygraph law, a recent *Newsweek* article on VSA, and an article about a specific incident using VSA.

Ms. Freiberger told the board that staff had gathered information on whether Virginia should accept this instrument as valid. It is a relatively new technology with no independent, scientific study to validate its use. Staff's recommendation would be that Virginia not move forward on accepting the instrument at this time.

Mr. Martin said that in order to validate the use of VSA scientific, double-blind studies must be performed, where those administering the test and those taking the test are not aware of what is taking place until the results become clear.

Currently, one test is being conducted by the British financial firm HBOS (Halifax and Bank of Scotland). Ms. Ferguson suggested that staff get the results of that study.

As the law is currently written, the Director of the Department of Professional and Occupational Regulation may approve the use of other instruments that record physiological changes to determine truthfulness.

Mr. Martin moved to adopt the study report; motion was seconded by Ms. Boose-Jackson.

Ms. Ferguson said that the VCU police were using VSA, and Director Ware replied that if they were, they were using it illegally.

Director Ware told the Board that the Polygraph Examiners Advisory Board meets on Friday, November 21, 2003, and, based on the BPOR Board recommendation, she would make a decision at that time.

Mr. Martin stated that because of a lack of guidelines, DPOR would be required to proceed through the Administrative Process Act (APA) if the Board should recommend use of VSA. The APA would establish who can use VSA, when it can be used, and how much to charge for licensure. Ms. O'Neal agreed that it would be necessary to go through the 18-24 month APA process.

Ms. Ferguson asked about the use of VSA by transportation security at airports. Mr. Olson responded, saying that the National Security Administration (NSA), Central Intelligence Agency (CIA), and Air Force have been named as agencies using VSA, but none will admit to using it.

Following further discussion by the board, it was noted that the Polygraph Examiners Advisory Board asked BPOR to conduct the study on the validity of VSA, since BPOR was a neutral board that had previously conducted studies in many areas.

Ms. O'Neal said that before the new law was passed, VSA was not authorized for use. Following the new law, VSA could be used only with the approval of the Director of the Department of Professional and Occupational Regulation. At this time, it is not authorized for use. Ms. O'Neal stated that the draft study highlighted all the public comments, contained a lengthy list of recommendations, and supported the fact that data is not currently available to conclude the validity of VSA.

Mr. Meany amended the motion to read:

Since there have been no independent scientific studies conducted on the reliability of the computer voice analyzer to detect deception, the Board recommends to the Director of the Department of Professional and Occupational Regulation that computer voice analyzer equipment should not be approved in Virginia at this time. Mr. Martin stated he would accept the amendment as friendly.

Maxime Frias entered the meeting at approximately 11:18 a.m.

Ms. Ferguson asked if it mattered who was using VSA. Director Ware said anyone using it at this time was using it illegally. She told the Board that Jack Kotvas, former DPOR Director, wrote a letter to law enforcement officials advising them against the use of VSA in Virginia. The Virginia Code does not provide for the use of VSA.

Mr. Olson explained that previously, the only truth detection device was the polygraph. That has changed; there are other devices available, but currently they can only be used at the discretion of the Director. The Polygraph Examiners Advisory Board charged the BPOR Board with the job of conducting a study to determine the validity of VSA. If the Board finds that VSA is not a valid tool, they should recommend that it not be used. Mr. Olson noted this is an emotional issue, but the Polygraph Examiners Advisory Board asked for scientific proof.

Ms. Ferguson requested a further grammatical amendment to Mr. Meany's amendment, changing "Since" to "Because." Mr. Meany agreed to the change.

The vote was taken on the motion:

Because there have been no independent scientific studies conducted on the reliability of the computer voice analyzer to detect deception, the

Board recommends to the Director of the Department of Professional and Occupational Regulation that computer voice analyzer equipment should not be approved in Virginia at this time. Seven members (Jackson, Boose-Jackson, Clifford, Lushbaugh, Martin, Meany, Pfeiffer) voted to accept the recommendation, and two members voted against (Ferguson, Frias).

There was no other business.

Other Business

Director Ware thanked Mark Courtney, Eric Olson, and Kim Freiberger for the extra time and work spent on the development of the both draft studies.


Chairman Jackson adjourned the meeting at 11:38 a.m.

Adjournment

Following the adjournment, Director Ware announced that this was the last meeting for board member Dana Martin of Roanoke. Governor Warner recently appointed Mr. Martin to the Commonwealth Transportation Board. He will be greatly missed as a member of the BPOR Board.

 3/1/04
Raynard Jackson, Chairman

Vice


Louise Fontaine Ware, Director

COPY TESTE:

Custodian of Record