

Board for Professional and Occupational Regulation Meeting

MINUTES

The Board for Professional and Occupational Regulation met on Monday, June 2, 2003, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. The following members were present:

Raynard Jackson, Chair
Keela Boose-Jackson
Maxime A. Frias
Susan T. Ferguson, Vice-Chair
Dana Martin
Thomas J. Meany, Sr.
Morris A. Nunes
Leroy O. Pfeiffer, Sr.

Also present for all or part of the meeting were:

Louise Fontaine Ware, Director
Sandra Whitley Ryals, Chief Deputy Director
James L. Guffey, Deputy Director for Enforcement
Steven L. Arthur, Deputy Director for Administration and Finance
Karen O'Neal, Deputy Director for Regulatory Programs
Rose Kinder for Jeanne Branch, Information Technology Manager
Mary Broz, Communications Director
Eric Olson, Executive Director for Contractors
Mark N. Courtney, Executive Director for APELSCIDLA
Dawn Waters, Director for Policy, Planning and Records Management
Judy Spiller, Executive Secretary

Members of the Public present for all or part of the meeting were:

David C. Newby, Chief Deputy Sheriff, Chesapeake (speaker)
Don Cahill, Stafford County (speaker)
Nancy McIntyre, Virginia Association of Surveyors (speaker)
Charles Foster, Air Survey Corporation (speaker)
James O'Sullivan, Chesapeake Sheriff
Wyatt Omohundro, Polygraph Examiner
Captain Christopher A. Hicks, Richmond Sheriff
Lt. James Eckenrode, Richmond Sheriff
Lt. Gary M. Jenkins, Polygraph Examiners Advisory Board Chair
David Holland, Land Surveyor (speaker)

Raynard Jackson, Chairman, called the meeting to order at 10:07 a.m., noting that a quorum was present.

Call to Order

Mr. Jackson called for a motion to accept the minutes of the March 3, 2003, meeting. Mr. Pfeiffer moved to accept the minutes as presented. Ms. Ferguson seconded the motion. Motion carried unanimously.

Minutes
Approval

The following members of the public spoke: David C. Newby, Chief Deputy Sheriff of the City of Chesapeake; Don Cahill, retired police officer from Stafford County; Nancy McIntyre, Virginia Association of Surveyors; Charles Foster, Air Survey Corporation; David Holland, Land Surveyor in Henrico County and Lt. Gary M. Jenkins, Chairman of the Polygraph Examiners Advisory Board.

Public
Comment

David C. Newby, Chief Deputy Sheriff from the City of Chesapeake, has been in law enforcement for 32 years. The Chesapeake Sheriff's Office is seeking approval of the use of computer voice stress analyzers (CVSA), following its work with Delegate John Cosgrove and Senator Harry B. Blevins who sponsored SB 1296 /HB 2812. The Chesapeake Sheriff's Office anticipates the use of the voice stress analyzer will not replace the polygraph, but will serve as an additional tool for law enforcement. Sheriff Newby feels the use of voice stress analyzers should be expedited. When the bill was passed, his office set up a school to certify CVSA users, which is due to start in two weeks. He requested DPOR approval for the school. Director Ware stated that DPOR is trying to determine how CVSA use falls within the *Code of Virginia* and will respond as soon as possible. Ms. O'Neal explained that it would take 18-24 months to complete the regulatory process.

Mr. Nunes asked whether Sheriff Newby considered this an emergency. Newby responded that in light of the sniper shootings in the D. C. area, and the witness who identified the "white van," law enforcement could have used CVSA to determine the path of investigation.

Mr. Guffey reminded the Board that in 1999, the BPOR Board had studied the use of CVSA, and upon completion of the study, the Polygraph Examiners Advisory Board recommended that CVSA not be used. Following that recommendation, the Director sent a letter to all law enforcement not to use CVSA.

Don Cahill, retired 30-year police officer from Stafford County, spoke about the uses for CVSA. He said the tool had been tested by the Department of Justice and was found to be 94 percent reliable. It could be used either with or without the permission of the person being tested. Mr. Cahill stated that, like the polygraph; CVSA would not be permissible in court. Mr. Pfeiffer asked if the use was experimental, since the new law expires July 1, 2005. Mr. Cahill stated that law enforcement planned to get the bill passed and put CVSA into use.

Nancy McIntyre, President of the Virginia Association of Surveyors (VAS), said that her organization had been studying Photogrammetry for several years. Chairman Jackson asked Ms. McIntyre to define photogrammetry. She explained that photogrammetry was a method of mapping the contours of the earth and physical improvements by aerial surveying, and may be used in the design and development of streets, highways, and shopping centers. VAS's concern is that Photogrammetrists are not currently bound by the certification standards of land surveyors and are not licensed. Ms. McIntyre stated that VAS would prefer licensure for Photogrammetrists, with a defined time for grandfathering Photogrammetrists who are currently practicing. Mr. Martin asked about examples of problems caused by Photogrammetrists. The problem is not with their work, Ms. McIntyre said, but Photogrammetrists cannot sign off on the "survey." A land surveyor must sign off on a survey for work performed by a Photogrammetrist. Ms. McIntyre said VAS also expressed a desire to see Photogrammetrists licensed by the current (APELSCIDLA) board.

Charles Foster, Air Survey Corporation in Dulles, Virginia, stated that a number of states have regulated Photogrammetry, including Florida in 1994. After a brief grandfathering period, Photogrammetrists in Florida must pass all requirements to be land surveyors. Chairman Jackson asked if the Department of Defense had used Photogrammetry before the recent Iraqi attacks. Mr. Foster acknowledged that they may have. Mr. Foster explained that on many occasions photogrammetry is used when surveying large expanses of land because it is more economical. Photogrammetrists operate exclusively from an aircraft.

David Holland, a licensed land surveyor in Henrico County, explained that land surveyors determine topography, contours and improvements on the land. Photogrammetrists are able to set ground

controls and fly over the acreage to produce their readings more quickly than land surveyors. If the Photogrammetrist is not a land surveyor, he cannot signoff on the survey. The land surveyor must supervise and certify. The Virginia Association of Land Surveyors would like to see Photogrammetrists certified by DPOR. Mr. Meany asked whether new regulations would be required for Photogrammetrists.

Photogrammetrists would become land surveyors-photogrammetrists, according to Mr. Holland. As technology develops, he said, it is increasingly necessary to have Photogrammetrists regulated with land surveyors. Mr. Martin asked about damages to the public. Mr. Holland said he knew of no damages to the public.

The Director introduced Lt. Gary M. Jenkins as Chairman of the Polygraph Examiners Advisory Board, and A. Wyatt Omohundro, a member of that Board. Lt. Jenkins said that the Polygraph Examiners Advisory Board had decided not to endorse the use CVSA following the amended bill. It was left up to the Director to make that decision because studies showed only 50 percent validity in testing with CVSA. Because members felt the studies may be outdated, the Polygraph Examiners Advisory Board recommended a study be conducted of CVSA by the BPOR Board, with information obtained from the State Police and FBI, and the holding of public hearings. Ms. Ferguson said she was bothered by the Polygraph Examiners Advisory Board's inclination not to support the use of CVSA. She wondered how information would be obtained on its use, and stated that perhaps public hearings were not the way to go. She suggested talking to Federal agencies and obtaining a demonstration of CVSA. Ms. Ware stated that it was important to obtain public comment and the matter would be researched by staff. Ms. Ryals told the board that it was important to see all sides of the issue. She explained that the board would have an opportunity to discuss the adoption of the draft "Guidelines for the Evaluation of the Need to Regulate Professions and Occupations." This document was drafted by DPOR to assist in studies, with input from Department of Health Professions, as a guidance document for public hearings and other methods of collecting data. Mr. Meany commented that he did not feel the bill as written was resounding in support of CVSA. Mr. Nunes said he believed the bill was not a mandate for use, and he said there was no advantage in restricting usage.

Request for
Study of Voice
Stress
Analyzers

Mr. Nunes offered the attached resolution as a motion. Ms. Ferguson

seconded the motion. Mr. Nunes explained the six action points in his resolution. Director Ware stated that law enforcement is of utmost concern to her and DPOR, but it is important to go through the Administrative Process Act and to conduct a study of the CVSA issue. Ms. O'Neal acknowledged the importance of gathering objective data, and indicated she would be concerned about decisions being made prior to collection of information. Mr. Nunes said he understood her concerns, but felt that if a tool was available that could help deter terrorism (citing the sniper incident in the D.C. area), that he was dogmatic about the issue. Ms. Ferguson said she was personally confident about the use of CVSA by law enforcement. Mr. Guffey, who has been in law enforcement for 30 years, pointed out that polygraph regulations authorized the Director to approve polygraph schools. The current statute would require the Director to change the regulations to license CVSA. The only instrument currently approved for use by the Board is the polygraph exam. Regulations would need to be made for fees, licenses, and testing of CVSA. Mr. Nunes said he disagreed. Ms. Ferguson said that law enforcement wants to use new technology, they will have the training, and there would be no need for fees. Ms. O'Neal told the Board that the Act would require regulations to make case decisions. Director Ware suggested calling the Office of the Attorney General to obtain a determination. Mr. Nunes suggested the Director move with all deliberate speed. Mr. Martin reminded the Board that #5 of the Resolution accepts the study. Mr. Nunes said the issues are extremely complex, but that the Board could do the study, and that studies have been performed by the Board in previous instances. Mr. Meany said the Resolution was lengthy, and that it asked to move with full speed for immediate use. Mr. Nunes replied that he enjoined the Director to use CVSA. He was not asking her to go against the law, but to move according to the law, but as fast as possible. Ms. Ferguson said the statute promotes the authority to use CVSA and the equipment should be made available.

Lt. Jenkins responded that law enforcement was in favor of new technology and that law enforcement had a right to protect the public. The Polygraph Examiners Advisory Board was requesting the BPOR Board to conduct a study. He mentioned that the FBI was not using CVSA, nor was the CIA. Mr. Nunes questioned if the public should trust law enforcement. Lt. Jenkins said that it was important to know if the instrument was trustworthy. Ms. Boose-Jackson said she was neither for

or against the use of CVSA, but felt the Board needed to determine the reliability of this tool. Mr. Meany said he did not feel comfortable until the issue was studied, noting that legislators make mistakes and sometime pass poor bills. Mr. Martin expressed concern about the school already in motion in the City of Chesapeake. Ms. Boose-Jackson called for a point of order. Ms. Ferguson rescinded her second of the motion. Mr. Nunes agreed to amend his resolution to include "that upon this Act becoming effective on July 1, 2003, in accord with the law" and "with all deliberate speed." Ms. Ferguson said the bill did not prohibit use by those who have confidence in the CVSA and they should be allowed to use the tool. Chairman Jackson said the goals should be the sense of the Board, the study, and support for law enforcement. Ms. Boose-Jackson said that she would like the opportunity to read the Resolution. Ms. Spiller made copies for the board members.

Following a brief discussion, Ms. Boose-Jackson moved to adopt the staff presentation plan for the photogrammetry study, Mr. Pfeiffer seconded the motion, and it passed unanimously.

Request for
Study of
Photogrammet
ry

The Board recessed until 12:00 noon.

The Board returned from recess at 12:10 p.m. Chairman Jackson asked for opinions as to how to handle the CVSA resolution. Mr. Pfeiffer suggested splitting the study from the body of the resolution. Mr. Meany said he did not agree with "enjoining the Director" to expedite. Mr. Nunes said there was a provision to act "according to the law." Mr. Meany said he had too many questions concerning the Polygraph Examiners Advisory Board and reports from the FBI. Mr. Nunes protested that Virginia should not be lagging behind, becoming a haven for terrorists. Ms. Ferguson added that the action terminology in the resolution was consistent with the legislative change. Mr. Martin said if the Board agreed to immediate use, the CVSA may be proved unreliable. When the FBI approves its use, that approval would be proof enough for him. He agreed with the spirit and wanted to do the right thing, but wanted to have confidence in his decision. Ms. Ferguson again stated that she wanted the police to have the tools to do their job. Mr. Nunes agreed with further amendment to the resolution (amended resolution attached), to include proceeding with the BPOR Board study. Ms. Ryals again reminded the board that the methodology draft would be a separate item. Mr. Nunes read and agreed to the amended Resolution retaining

Request for
Study of Voice
Stress
Analyzers
(continued)

paragraph 2. Ms. Ferguson again seconded the Resolution. The vote was 4 (Nunes, Ferguson, Pfeiffer, Frias) to 3 (Martin, Meany, Boose-Jackson) in favor. Chairman Jackson abstained. When asked by Mr. Nunes how she planned to proceed, Director Ware replied that she would proceed with her original plans and would not make any decision until after the study was complete. Mr. Nunes responded "as kind as I can," that he thought the Director was wrong. Director Ware said she has tremendous respect for law enforcement and of the law, and she would go as fast as she could, following the law. Ms. Ferguson suggested that the two studies (Photogrammetry and CVSA) were quite different and that the hearings should not be held at the same time or using the same timetable. Mr. Nunes agreed.

Ms. O'Neal explained that the Board had conducted studies in the past, but felt that there should be procedures in place to conduct future studies. The proposed draft, with input from the Department of Health Professions, allowed for emphasis on different issues. The draft provided a general set of guidelines for studies. Mr. Nunes asked whether the model must be used if adopted. Ms. O'Neal said it was only a guideline. Ms. Ryals said the draft was responsive to studies performed last year, but served only as a work plan/timetable. Ms. Ferguson was not comfortable with the draft, because she said she had not yet read it. Ms. Ryals suggested accepting the study plan as a draft document. The vote was 6 in favor, 2 abstentions to accept the guidelines.

**Consideration
of
Standardized
Study Plan**

Director Ware updated the Board about her Executive Agreement with the Governor's office. In the area of adjudication, Ms. Ware asked Douglas Schroder, Assistant Director of Administrative Proceedings, to introduce Dawn Bell, summer Intern working with Adjudication. Ms. Bell is a law student at the University of Richmond, T. C. Williams Law School. Ms. Bell wanted to come to DPOR to gain experience and for the opportunity for public service.

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

The Alternative Dispute Resolution team, headed by Dispute Resolution Manager Carol Mitchell, is creating savings for DPOR. Dr. Robert Colvin, a former ABC Board Member and VCU professor, is serving as a consultant to make recommendations on how to streamline the enforcement process. Director Ware has been working closely with the Secretary of the Commonwealth's office to make all board appointments current. The new Fair Housing Board will begin operation this summer.

Director Ware introduced Eric Olson, Executive Director of the Contractors Board. His area has reduced the backlog of applications while still working with fewer staff. First, they identified areas where applicants make mistakes, and then they removed unnecessary questions. They have modified the application for Class C with the creation of a Class C Short Form. The size of the application has also been reduced from seven pages to one and one-half pages. Currently, 90 percent of applications are being reviewed and licenses issued the first time. A 10-week wait has been reduced to 6 days. The goal of the Contractors section is to license with a 72-hour turnaround. Director Ware commended this Team, which won the Teamwork of the Quarter award.

Dawn Waters, Director of Policy, Planning, and Records Management, spoke to the Board about Strategic Planning, advising them of the current status, making them aware that the process is ever changing. Within Strategic Planning, they first gather information; identify Strengths, Weaknesses, Opportunities, and Threats (SWOT); pinpoint critical issues; develop a Mission Statement; develop a Vision Statement and Values; establish Goals, Objectives, and Strategies; and develop an Action Plan. DPOR currently has five goals, 11 objectives, and 40 strategies that fit with goals and objectives. The Department has accomplished the hiring of two bilingual staff persons, development of an Employee Incentive Program, and reviews as to how DPOR's staff is doing its job. The agency's Strategic Plan Report was submitted May 21, 2003, to the Department of Planning and Budget and the Secretary of Commerce and Trade. New initiatives to add to the current ones include streamlining compensation and electronic case file management.

Raynard Jackson read the Resolution prepared to thank Mr. Nunes for his many years of service. A copy is attached to become a permanent record of the board. Mr. Nunes thanked the Board for their work and appreciated the time he served on the Board.

Resolution to
Morris A.
Nunes

Chief Deputy Director Sandra Whitley Ryals told the Board of the fire that occurred at DPOR in the early morning of March 26, 2003. Chairman Jackson asked if there was a sprinkler system in the building. Due to age, the building is not required to have a sprinkler system. However, due to the age and structure of the building, the fire was prevented from quickly spreading. Smoke detectors have been installed.

Sandra
Whitley Ryals,
Chief Deputy
Director

As a result of the Employee Recognition Program, many employees were honored for their assistance.

Ms. Ryals' legislative team has begun meeting in preparation for the General Assembly. The team is studying the internal process which begins in August, when recommendations are forwarded to the Secretary's office. Electrologists and Estheticians are two issues remaining from the previous sessions for which DPOR may recommend regulation.

Deputy Director for Administration Steven L. Arthur reported that FY2003 appeared to be on target. He explained that the Contractors Recovery Fund functions in place of bonding. Two payments were made from the Real Estate Recovery Fund last year. Mr. Arthur told the Board that fees are projected based on the number of regulants, and that the agency spending pattern remaining stable.

Steven L. Arthur,
Deputy Director for Administration and Finance

Karen O'Neal, Deputy Director for Regulatory Programs, reported that the Fair Housing law enacted last year (SB1102) creates a new Fair Housing Board. John Cancelleri will become the Fair Housing Director (Mr. Cancelleri has been serving in that capacity, but Fair Housing was administered through the Real Estate Board). This new Fair Housing Board, consisting of 11 members, establishes an education-based certification program. An applicant must take an approved course with approved instructors, and upon completion, will be certified. The Fair Housing Board will apply to individuals involved in the business of selling/renting dwellings, but excludes Real Estate professionals and their employees.

Karen W. O'Neal,
Deputy Director for Regulatory Programs

Rose Kinder, Computer Center Lead Engineer, spoke for Jeanne Branch, Information Technology Manager, who is out on sick leave. The Department will have on-line renewals for all boards by August 2003. There will be a link on the website to renew on line.

Jeanne Branch,
Information Technology Manager

Mary Broz, Communications Director, reported that DPOR was being more aggressive in its outreach to consumers. A prime example of that was the celebration of Older Americans Month in May. During the severe storms recently in Central Virginia, DPOR sent out a press release to advise those looking to have repairs made to seek the services of

Mary C. Broz,
Communications Director

licensed contractors. Currently if you use the "Regulant Lookup" section on the website, you will not see the name of a regulant whose license has been revoked; it will be omitted on screen. DPOR wants to show a revoked license on the website as "revoked," along with the final order. The agency is prevented from commenting on open investigations, but it may be possible to acknowledge that a case is open and present the disciplinary history online.

Mark Courtney explained the Conflict of Interest Forms to Board Members and asked that they fill them out before leaving. **New Business**

Chairman Jackson asked for a motion to adjourn. There was a second to the motion, and it passed unanimously. The meeting was adjourned at 2:00 p.m. **Adjournment**

Raynard Jackson, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

AMENDED RESOLUTION PROPOSED BY MORRIS A. NUNES
BPOR BOARD
JUNE 2, 2003

BE IT RESOLVED:

WHEREAS, there are serious threats of terrorism and criminal acts facing the Commonwealth and the Nation; and,

WHEREAS, the law enforcement agencies of the Commonwealth have a legitimate and emergent need to have all available tools, with appropriate Constitutional safeguards, at their disposal; and

~~WHEREAS, Section 54.1-1805 of the Va. Code grants to the Director certain discretionary powers to approve licensing instruments, such as computer voice stress analyzers; and~~

~~WHEREAS, computer voice stress analyzers are an additional tool that may have utility and value to law enforcement; and~~

WHEREAS, Section 54.1-1805 of the Va. Code also grants to the Director certain discretionary powers to prescribe the conditions of use by licensed examiners; and

~~WHEREAS, Section 54.1-1805 of the Va. Code also requires that such conditions of use "shall include a provision requiring the examiner, prior to the use of such instrument, to (i) complete a Director approved training course on its operation and (ii) be certified by the manufacturer on the use of such instrument;~~

NOW, therefore, *that upon the Act becoming effective on July 1, 2003, in accord with the law*, the foregoing having been duly considered, it is hereby RESOLVED:

1. The Director is enjoined to forthwith and speedily consider for approval any application for appeal of a training course submitted by or through a law enforcement agency; and
2. The Director is enjoined to forthwith and speedily arrange cooperation and coordination with qualified manufacturers to expedite certification of law enforcement personnel in accord with the Act; and
3. It is the urgent recommendation of the Board that the Director include as a condition of use that any licensed examiner who is an employee or contractor of a law enforcement agency and sponsored thereby, be certified for use of computer voice

stress analyzers once such licensed examiner has completed a training course and been manufacturer-certified; and

4. That the Director proceed with all deliberate speed to accomplish the foregoing as a priority of the greatest urgency; and
5. That this Board proceed with a study to further verify the utility and reliability of the tool; and
6. That upon the consideration of such study, any data and recommendations flowing there from be promptly considered by the Director for possible amendment or refinement of such conditions.

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10. That the Director proceed with all deliberate speed to accomplish the foregoing as a priority of the greatest urgency; and
11. That this Board proceed with a study to further verify the utility and reliability of the tool; and
12. That upon the consideration of such study, any data and recommendations flowing there from be promptly considered by the Director for possible amendment or refinement of such conditions.



Commonwealth of Virginia

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

RESOLUTION TO

Morris A. Nunes

WHEREAS, **Morris A. Nunes** did faithfully and diligently serve as a member of the Virginia Board for Professional and Occupational Regulation from 1995 to 2003;


WHEREAS, **Morris A. Nunes** did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Morris A. Nunes** did endeavor at all times to render decisions with fairness and good judgment in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Board for Professional and Occupational Regulation wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Board for Professional and Occupational Regulation this second day of June 2003, that **Morris A. Nunes** be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.


Raynard Jackson

Raynard Jackson, Chair

Louise Fontaine Ware

Louise Fontaine Ware, Secretary