

TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

Meeting of October 29, 2004
William P. Hobby Jr. Building
333 Guadalupe, Texas Department of Insurance Hearing Room 100
Austin, Texas

Summary of Minutes

The Chairman called the meeting to order at 10:50 a.m. on October 29, 2004 as per Agenda Item A.

The Chairman moved to **Agenda Item B., Roll Call and Certification of Quorum.** The roll was called by Secretary/Treasurer, Rene Pena. Members present were Chairman W. Kevin Coleman, Vice Chairman, Edward G. Miller, Secretary/Treasurer, Rene Pena, Kelly Krenz-Doe, Murray Milford, Gordon Ware, Kimberly Phillips, Shiela Hall, and Danny Perkins. **All Board members were present.**

The Chairman moved to **Agenda Item C., Absences of Board Members - Discussion and Possible Action.** There were **no previous Board member absences which required discussion and/or action.**

The Chairman moved to **Agenda Item D., Approval of Minutes of the August 20, 2004 Board meeting.** After review of the minutes by all members, a motion was made to approve the August 20, 2004 minutes by member Rene Pena and seconded by member Gordon Ware. The motion passed unanimously and the minutes were approved.

The Chairman moved to **Agenda Item E., Public Comment.** Joe McCullough, new Executive Director of the Texas Association of Professional Geoscientists (TAPG) addressed the Board by informing them that TAPG, who had been located in the Dallas area in the past, had just recently moved their headquarters located off the Hwy 290 and Hwy 183 to Austin where they would be promoting the TAPG on a statewide basis. In addition to providing the Board with a background of the TAPG, he also stated that he was sitting in attendance at today's meeting to familiarize himself with names and faces plus offer the Board TAPG's assistance in response to any of the Board's needs.

Mr. McCullough educated the Board by explaining that his association company handles phone calls, mailings, marketing, and the production of newsletters and websites for the TAPG and that the main intent of TAPG now was to unify the 6,000+ licensed professional geologists, who have been licensed by TBPG, into one focused association functioning to assist the Board with any problems or concerns, advice or recommendations or pertinent information that would be helpful in the Board's endeavors over the next few years. Mr. McCullough added that TAPG had just concluded their association's first statewide conference in Dallas at the Ellison Miles College where 100 attendees listened to speakers such as the Board's current Chairman, Kevin Coleman and Executive Director, Michael Hess. He summarized that TBPG presentations and participation were well-received by TAPG and that he looked forward to conducting future

conferences in Houston and other regional sites. Mr. McCullough pledged to the Vice Chairman, Edward Miller, his assistance, if possible, in the Board's lobbying efforts for the geological industry as well as his consideration for aiding TBPG with a future avenue within the current statute for the creation of a geologist-in-training (GIT) license.

Mr. McCullough also indicated to the Board that the current TAPG Board is comprised of twelve (12) board members with key contact names to familiarize themselves with being President, Scott Poynor and Legislative Committee Chair, Mark Baker. Mr. McCullough further added that the association had a web site of www.tapg.org that indicates current activity of upcoming geological events, and will be enhancing its web site information by adding a link to the TBPG and 79th Legislative Session. Mr. McCullough informed the Board members that the Association had also received a \$5,000 donation from a one of the geological groups who believes in the TAPG promotion.

Mr. McCullough concluded his briefing to the Board in delivering sad news of the passing away of one of the instrumental founders in the passage of the Geoscience Practice Act, Former Representative Fred Agnich, noting that the TAPG had created a scholarship in his honor for his years of dedicated service to state government and catapulting professional geologists to the forefront of state government.

The Chairman moved on to **Agenda Item F., Introduction of Representatives of Other State Agencies, Presentation and Discussion.** Executive Director, Michael Hess informed the Board that Frank Knapp, from the Office of the Attorney General, was present in attendance of today's meeting.

The Chairman moved on to **Agenda Item G., Staff Reports** - Update on Board Financial Matters. Chief Financial Officer, Vince Houston addressed the Board by informing the members that as of October 1, 2004 he had increased the staffing level of his Accounting Division with the addition of his assistant, Leticia Kappel, a graduate of Texas State University, who brings 14 years of accounting and state experience to the agency.

Mr. Houston reported to the Board the agency's approved budget for the upcoming fiscal year and the agency's total revenue collected for fiscal years 2004 and 2005 as well as the amount of funds the agency had returned to General Revenue for fiscal year 2004. He emphasized to the Board that no funds had been transferred to general revenue for fiscal year 2005 to date. Mr. Houston informed the Board that the previous LAR report, indicating an anticipated lapse of funds, had been revised to reflect a marked decrease in return of agency funds to general revenue as compared to the first report and that both a revised base reconciliation and a revised LAR would be submitted to the Legislative Budget Board. Mr. Houston presented the Board with the agency's new biennium budget. He stated to the Board that the Annual Financial Report (AFR) was in the process of being finalized and due at the Comptroller's Office by November 20, 2004, and upon finalization, that a copy of the AFR would be furnished to all board members along with the revised version of the LAR. Mr. Houston added that within the Board meeting booklet he had furnished to all Board members, a copy of the schedule of all agency required reports, report information requirements inclusive of report deadline dates, and the purchase order policy and process guidelines. In closing, Mr.

Houston informed the Board he would be assuming the responsibility of strategic plan coordination and agency performance measures.

Update on Licensing (Annita Herrera) Director of Licensing, Annita Herrera addressed the Board by informing the members that as of October 1, 2004 she had increased her Licensing Division with the addition of her new assistant, Ariel Juarez, a recent graduate of the University of Texas, who brings previous state experience to the agency where he was employed for both the Texas Senate and the Office of the Governor.

Ms. Herrera informed the Board that up-to-date 6,858 geoscience applications had been received at the agency, 6,659 applicants had actually obtained their license, 5,037 licensees had actually utilized the TexasOnline service for license renewal, 695 licensees had not yet renewed their licenses, and approximately 200 applicants had been denied a license either by Board vote or failure to submit required documentation. Ms. Herrera provided the Board with the new ASBOG procedures, as recommended by ASBOG, for Board review as compared to agency recommendations for ASBOG procedures. Ms. Herrera informed the Board of the agency's first newsletter publication created under the direction of her new assistant, Mr. Ariel Juarez and that the publication would soon be available for viewing on the agency's web site. Ms. Herrera indicated that her division was soon to begin the process of e-mailing university geology department heads to both introduce the TBPG agency to the universities and to inform the universities of the agency's licensing process and procedures. Ms. Herrera also gave a brief explanation of the licensing process during the grandfathering period plus the application review committee process flowchart.

Executive Director, Michael Hess, asked if the agency could offer a service where someone could update their file with their sub capability, regions or sections and specialties. The Board was concerned that this would bring the agency into the advertising realm. Mr. Hess inquired as to how the agency could identify the sub capabilities and specialties that certain people perform, whether the agency could have that information on its website if voluntary disclosure was acquired, and whether the agency could charge for it? Frank Knapp recommended that he be forwarded a memo so that he could address any agency concerns. The Chairman stated to Mr. Hess that he was free to do the research but would not be authorized to implement any action until the Board had made a decision on the matter.

The Chairman moved to **Agenda Item H., Review of "Policy Advisory Opinion Regarding Water Quality Planning" drafted by the Texas Board of Professional Engineers, Discussion and Possible Action.** The Chairman asked if all members had been afforded the opportunity to review the letter, and if they had not, asked that all members take time to do so. The Chairman added that no Board action would be taken regarding the letter, but that the Board would need to decide whether it wanted to prepare and submit comments in response to the drafting of the letter. Frank Knapp of the Attorney General's Office recommended that a committee be appointed to draft a response to the Engineering Board draft letter, that a public meeting announcement be posted for that committee to meet quickly, and that the committee's response letter be drafted and sent to the Engineering Board without haste due to the 180 day submission deadline that had only a few days remaining before lapsing. Discussion ensued. Member Kimberly Phillips made a motion which was seconded by member Danny Perkins to

have Dr. Murray Milford and Vice Chairman, Edward Miller review the Engineering' Boards Policy Advisory Opinion Regarding Water Quality Planning draft letter and approach the Engineering Board for recommendation of changes. The motion passed unanimously.

The Chairman moved to **Agenda Item I., Discussion and Possible Action to Establish a Policy Advisory Opinion Regarding Water Quality Planning Committee** and stated that this agenda item would be skipped since a Board vote in the previous agenda item would apply to this one as well.

The Board recessed for lunch and agreed to reconvene at 1:00 PM to discuss the remaining agenda items.

The meeting was called back to order at 1:00 PM by the Chairman.

The Chairman moved to **Agenda Item J., Memorandum of Understanding between Texas Board of Professional Geoscientists and Texas Board of Professional Engineers, Discussion and Possible Action.** He asked Board members to turn to Section 1002.004 of the Occupations Code, item (j) which addressed Board responsibility under the agency's current statute. Discussion ensued. The Chairman recommended that a joint committee of both the Engineering Board and the TBPG be formed to take recommendations from each Board back to one another in order to enter into a memorandum of understanding between the two boards that would benefit both agency[s and address each agency's concerns. The Chairman instructed the Board members to make in change in the copy of the MOU handout in the sentence that begins with "In consideration of the Geoscience Practice Act" and to insert the words "provisions of the" before "Geoscience Practice Act" under paragraph 3 to create the preamble for entering into the memorandum of understanding with the Engineering Board as per the advice of Frank Knapp, counsel from the Attorney General's office. Another recommendation from Executive Director, Michael Hess and Frank Knapp was to strike out the definitions relating to geoscience. A motion was made by member Rene Pena to accept the Memorandum of Understanding which had been presented before the Board with the exception of striking the last two sentences of page two and adding the word "provisions of the" as recommended by Frank Knapp in paragraph three of the first page. The motion was seconded by member Kelly Krenz-Doe. Discussion was reopened by member Danny Perkins as to the approval of the final draft of the MOU. The concern being that the final draft should be approved by the full board of both agencies. Member Rene Pena amended his first motion to reflect his making a motion to approve the Memorandum of Understanding letter by requiring approval by the Chairman of the Engineering Board and majority of the TBPG Board inclusive of striking through the last two sentences of page two as recommended changes and adding the word "provisions of the" as recommended by Frank Knapp in paragraph three of the first page. The motion was seconded by member Kelly Krenz-Doe. The vote passed unanimously. Member Gordon Ware left the meeting directly after casting his vote.

The Chairman moved to **Agenda Item K., Update on Status of Continuing Education Rules - Discussion and Possible Action.** Vice Chairman, Ed Miller, gave a status update on the continuing education program informing the Board members that shortly after the Board's last meeting a draft version of the continuing education program was posted on the agency web site

and that up-to-date he had received approximately 22 comments from the geological community. He stated that his and the executive director's intent was to review and address each comment submitted in order to create one compiled version of all recommendations and determine whether the comment or suggestion should be deleted or added to the final version of the continuing education program for a final submission requiring Board approval. He further suggested that a work group be established after adoption of the continuing education rules to monitor the continuing education program and that the upcoming TCEQ Trade Fair be viewed as an agency outreach opportunity to publicize the newly adopted CE program through either the annual TBPG booth or possibly educational presentations throughout the trade fair depicting what would be considered acceptable continuing education by the agency. Discussion ensued. It was the recommendation of Vice Chairman Miller that the continuing education program not be enforced until approximately one year after the date of the program's adoption, which if passed at the next board meeting would be implemented in year 2006 and that the agency do research comparing how other states monitor and audit the enforcement of their respective continuing education programs. Frank Knapp concurred and stated that the agency's rules could and should be written to specify the agency's enforcement timeframe and capability. Members Kimberly Phillips and Rene Pena also suggested that the current renewal application form be modified to include an additional area at the end of the form which would reflect what continuing education courses were taken by the licensee in order to facilitate auditing by the agency. No action was taken by the Board on this agenda item.

The Chairman moved to **Agenda Item L., Possible Providers Continuing Education Workshop - Discussion and Possible Action.** Executive Director, Michael Hess requested approval from the Board to continue with this project once the rules and continuing education program were set up to schedule a workshop in early winter so that the agency could have that discussion with possible providers. He further added that if the rules and continuing education program were set up according to the structure of the Engineering Board, there would be no need for the workshop. Discussion ensued. Director Hess explained that the purpose of the workshop would be to clarify by virtue of qualified providers what would be acceptable to the Board for continuing education credit inclusive of a possible coding system assigned to courses given by the provider or instructor. No action was taken by the Board on this agenda item.

The Chairman moved to **Agenda Item M., 22 TAC §851.80 - Licensing Fees - Discussion and Possible Action.** Item (a) GIT (Geologist in Training) Certificate fee was struck from the agenda and not discussed due to an omission within the statute for a GIT certificate. No discussion on Item (b) Amendment to temporary or one time licensure fee occurred due to lack of preparation and research by the Committee. Item (c) Application Review Processing fee was discussed regarding the current \$25.00 fee charged for the review of an application for individual's taking the ASBOG exam. Vice Chairman, Edward Miller, made a motion to authorize staff to charge a \$25.00 processing fee for reviewing an application prior to authorizing that individual to take the ASBOG exam noting that this fee was to be listed as a separate fee in the TBPG rules. The motion failed. Member Danny Perkins made a motion that this issue be remanded back to staff for recommendations on how to they would like to proceed in addressing this issue for the Board to vote on at the next meeting. The motion was seconded by member Shiela Hall. The vote passed unanimously.

The Chairman moved to **Agenda Item N., Discussion and Possible Action of Application Review Procedures.** Discussion opened with all Board members reviewing an insert within the Board meeting book that provided each member with a flowchart explanation of the current application review process. Member Kimberly Phillips opened the floor for discussion by clarifying how the visual chart would allow each member to understand how the Applications Review Process should work. Member Phillips mentioned that the change within the flowchart would reflect that once the Applications Review Committee denied an applicant's licensure, the applicant would then be afforded the opportunity to submit a request for a SOAH hearing upon receipt of their declination letter and go directly to SOAH instead of to the Board. She noted that the misconception by the Board in the past has been that once the declination letter was received by the applicant, then the denial recommendation was brought to the Board for a vote. She recommended that this change be implemented into the Application Review Committee's current procedures and further added that this process would allow the decision rendered by SOAH to be presented to the entire Board for final approval. This flowchart would also allow for streamlining only those applications that the Applications Review Committee had recommended for approval to be brought before the entire Board for a vote. Discussion ensued. Vice Chairman Miller asked Frank Knapp about "recusals" pertaining to the scenario when a two-thirds vote would be necessary by the Board. Frank Knapp addressed the Vice Chairman's question by responding that he would obtain a recommendation and answer on the issue of recusals from his office and forward the Attorney General's decision to the Board. Mr. Knapp also answered questions from the Board regarding Section 6.05(b) upon whether approval under this section of the Act would be considered a waiver and his response was that Section 6.05(b) was **not** considered a waiver. After further discussion of the Application Review Committee's flowchart Mr. Knapp recommended that the flowchart sheet be amended to reflect "waiver request under Section 6.09" in the top right box of the flowchart due to the fact that the only waivers that should come before the Board are waivers granting approval under Section 6.09 by the Application Review Committee.

The Chairman moved to **Agenda Item O., Discussion and Possible Action on Recommendations of the Application Review Committee on the Following Waiver Requests and/or Approval of Applicants**

a) Transcript and reference form waiver requests pursuant to §6.09 of the Act

1) **William C. Howieson** - Application Review Committee confirmed that the applicant had a degree in Geophysics, had submitted a letter in lieu of transcript from the University of Liverpool, met all other requirements and therefore recommended approval. A motion was made by member Rene Pena to approve under Section 6.09 of the Act and was seconded by member Kimberly Phillips. The vote passed unanimously.

2) **Mark Murphy** - Application Review Committee confirmed that the applicant met requirements in the field of Geophysics, had submitted a letter in lieu of transcript from the Central Queensland University, and recommended approval. A motion was made by member Rene Pena to approve under Section 6.09 of the Act and was seconded by member Danny Perkins. The vote passed unanimously.

3) **Andrew M. Conway** - Application Review Committee confirmed the applicant had met requirements in the field of Geophysics, had submitted a letter in lieu of transcript from the

Imperial College of Science and Technology in London, and recommended approval. A motion was made by member Rene Pena to approve under Section 6.09 of the Act and was seconded by member Kelly Krenz-Doe. The vote passed unanimously.

4) **Michael R. Yates** - Application Review Committee confirmed the applicant had met requirements in the field of Geophysics, had submitted a letter in lieu of transcript from Cardiff University in Wales, and recommended approval. A motion was made by member Danny Perkins to approve under Section 6.09 of the Act and was seconded by member Kelly Krenz-Doe. The vote passed unanimously.

5) **Norman W. Paterson** - Application Review Committee recommended applicant be remanded back to staff due to omission of the letter in lieu of transcript from Kingston University that had not yet been received and was within applicant's file. The Chairman stated that due to this omission the applicant was not under Board consideration at this time.

6) **Gentiana Ionescu** - Application Review Committee confirmed the applicant had met requirements in the field of Geophysics, had submitted a letter in lieu of transcript from the University of Bukarest, and recommended approval. A motion was made by member Rene Pena to approve under Section 6.09 of the Act and was seconded by member Kelly Krenz-Doe. The vote passed unanimously.

7) **James J. Parr** - Application Review Committee confirmed the applicant had met requirements in the field of Geology, had submitted a letter in lieu of transcript from the University of Aston in Birmingham, England and recommended approval. A motion was made by member Rene Pena to approve under Section 6.09 of the Act and was seconded by member Kelly Krenz-Doe. The vote passed unanimously. A motion was made by member Danny Perkins to approve under Section 6.09 of the Act and was seconded by member Kelly Krenz-Doe. The vote passed unanimously.

8) **Raj Singh** - Application Review Committee confirmed the applicant had met requirements in the field of Geophysics, had submitted a letter in lieu of transcript from the Indian School of Mines in Dahambap in Bihar, India, and recommended approval.

The Chairman took the time to thank all committee members individually noting a job well done for their hard work, participation, sacrifice, and time dedicated to the completion of their project and assignments.

The Chairman moved to **Agenda Item P., Executive Director's Report to Include Discussion and Update off the Agency's Progress**. The Executive Director emphasized to the Board that the agency had made its presence known at the Capitol with a positive reputation. He further added that although the groundwork of the agency had been done, there were yet more missions to be accomplished. He recommended to the Board that emphasis be placed on the creation of committees referencing an insert in the booklet on how the Engineering Board had established theirs. The Executive Director stated that the Legislative Session would soon be commencing and he would need to have committee member assignment readily available during testimony.

The Chairman moved to **Agenda Item S., Recommendations for Agenda Item for Next Meeting**. A recommendation was made by member Shiela Hall for the Board to once again entertain the Chairman's suggestion at an earlier meeting of the appointment of advisory committees with PGs outside the Board. Vice Chairman recommended placing on the agenda

discussion and possible action of the continuing education program rules, a report by him regarding his attendance to the National Association of State Boards of Geology Annual Meeting held November 1-7, 2004 in Boise Idaho, a report by Dr. Murray Milford regarding his attendance at the CSSE Annual Meeting held October 31-November 6, 2004 in Seattle, Washington, a briefing to the Board regarding the draft letter written by him and Dr. Milford regarding the agency's response to the Texas Board of Professional Engineer's Opinion Letter regarding Water Quality Policy Planning, and proposed amendments by the Executive Director to the agency's fee structure. Member Kelly Krenz-Doe suggested through discussion and possible action revisiting the possibility of incorporating the Geologist in Training (GIT) into the statute. Member Kimberly Phillips suggested adding Frank Knapp's findings regarding the issue of recusals by Board members when a waiver is requested as well as the Executive Director's recommendations for committee appointments. The Chairman urged all the Board members to submit any agenda items to be added for the next Board meeting approval to the Executive Director so that the Executive Director could make one final submission to him for approval.

The Chairman moved to **Agenda Item T., Discussion of Date, Time and Location of Next Board Meeting.** The date of February 7, 2005 was selected for the next Board meeting to be held in Austin, Texas.

The Chairman moved to **Agenda Items Q and R,** and announced that the Board was entering into executive session pursuant to Sections 551.071 and 551.074, Texas Gov't Code.

After completion of the executive session pursuant to Sections 551.071 and 551.074, the Board returned to open session and continued with its agenda items.

The Chairman moved to **Agenda Item U., Adjournment.** A motion was made by member Kimberly Phillips and seconded by Vice Chairman, Edward Miller to adjourn. The vote passed unanimously and the meeting was adjourned.

Rene D. Pena, Chairman
Texas Board of Professional Geoscientists