

Amended Minutes
Plumbing and Mechanical Systems Board Meeting
Tuesday, December 21, 2010

University Hygienic Laboratory
DMACC, 2220 S. Ankeny Blvd., Ankeny, IA 50023
Iowa Laboratory Facility Rooms 207/208

Board Members Present: Stuart Crine, Thomas Day, Mick Gage, Jane Hagedorn, Ron Masters, Dennis Molden, Susan Salsman, Ken Sharp, Chuck Thomas and Brita Van Horne

Staff Attending: Cindy Houlson, Matt Oetker, September Lau, Susan Van Horn, Dan Hostetler and Mary Swinehart

Call to Order – Chair Jane Hagedorn

Minutes dated November 16, 2010

Ron Masters made motion to approve minutes

Thomas Day seconded

No further discussion was held

Vote: All ayes

Motion: Carried

Contested Case Proceeding Training – Jean M. Davis, Chief Administrative Law Judge for the Department of Inspections and Appeals

Judge Davis provided an outline for her presentation (attached)

Questions following presentation:

Ken Sharp: *I have been through a couple Administrative Law Hearings where it is just the Administrative Law Judge hearing the case from both sides and there is not a jury. What is the procedure for board members to ask clarifying questions when is it appropriate to do that, how is that initiated, what role does the board play in terms of getting that clarifying information and asking questions during the hearing.*

After direct examination of the witness and cross examination there may be a little bit of redirect but there really shouldn't be much of that. After that the Administrative Law Judge will invite board members' questions. We try to do it in that order to stick to our procedure and every witness is treated the same way. Also, hopefully by the time we have gone through that level of questioning there shouldn't be many questions left for the board.

Tom Day: *When in a disciplinary process trying to decide what to do with a case, Matt and September directs us in regards to the rules. When the administrative law judge starts, who then watches over us to be sure we keep on straight and narrow?*

The administrative law judge will be there to guide you through that process. It is very important that the judge understand exactly the limitations of your statute.

Tom Day: *What kind of time are we looking at once something would go to an administrative law judge?*

30 days in drafting, the board will be initiating the statement of charges. Usually the notice of hearing is served with the statement of charges. The board sets the hearing; it then goes with the charging document, usually called notice of hearing. Then the judge docketed in our office, we are ready to go that day

Matt Oetker: *Is there any coordination in setting that initial date for the public hearing between the executive officer and DIA?*

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It is helpful but there will be times when you won't be able to and we will just have to make someone available.

Stuart: *What if the board did not want to use an administrative law judge? Can boards do hearings without ALJs?*

I don't recommend that. I think it is poor practice and these are highly technical and highly complex, there is a whole line of case law.

Ken Sharp: *What are some good examples of caps in terms of penalties? What is reasonable for different licensing boards in terms of what acts they take and amounts that are charged?*

The nursing board is a high volume board and I was with them for many years. I can only remember a handful of times where the first sanction imposed was revocation, and it was the only thing available to ensure protection of the public. Suspension was more common where you had circumstances where there is an impaired practitioner that needs to get treatment. Sanctions need to fit the crime. You want to be sure especially the first few you will be building history and you have some range of sanctions.

Ken Sharp: *Until such time as this board has a bit of history, in terms of what those sanctions look like, how much influence is there in our actions based upon other disciplinary boards?*

You could look at the history of discipline by a similar situation board to determine how other boards have handled certain areas, such as proficiency within the trade.

Denny Molden: *I think we will have this come about where people have downright lied about their qualifications and fraudulently got their license. Would that be a case for revocation?*

Yes, I think fraud in obtaining a license is always a basis for revocation.

And fine possibly?

Yes, but it has to be established. There usually has to be intent. There can be some type of fact finding, such as what type of training was provided, who provided it, where was it provided. From the license you issued it looks like there are certain categories of master licenses and journey licenses, maybe that is the area where you anticipate some problems, those hearings are going to be fact loaded. There will be a lot of information presented to you by the prosecutor to establish he didn't do this, didn't have this, to demonstrate actual fraud and by the licensee to say, I did this. The prosecutor may ask for particular types of sanctions in the closing that fit the history.

Chuck Thomas: *How would I find out when a hearing is scheduled that we could attend?*

The easiest way would be is to have Cindy communicate with me as we maintain three types of calendars where all of our cases on any given day appear on one of those calendars. We have the two high volume dockets, Department of Transportation and Department of Human Services and we have the miscellaneous docket which you would probably be most interested in.

Kevin Kruse: *When an individual files a complaint with the board on a potential violation would there be a situation where that individual would have to be involved in the hearing?*

There can be times where that person actually witnessed something done improperly, generally they are fact witnesses.

How often do individuals represent themselves and does the Board have to take special considerations if they are not represented by legal counsel?

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The Administrative Law Judge, assigned to the case, has a special role to assure individuals understand the process and understand how the pieces are going to fit together and what they can do within that framework. With a licensed professional, more often than not the person has acquired legal counsel because this is their livelihood.

Mike Minnick: *If a complaint is submitted by an employee of a municipality, does the person have to list his/her name or as a representative of a municipality?*

If a complaint was filed by City of Des Moines for example, it would be more difficult for the investigator to determine who has actual factual information.

The statute states: "**105.29 REPORT OF VIOLATORS.** Every licensee and every member of the board shall report to the board the name of every person who is practicing as a contractor or as a plumber or mechanical professional without a license issued pursuant to this chapter pursuant to the knowledge or reasonable belief of the person making the report. The opening of an office or place of business for the purpose of providing any services for which a license is required by this chapter, the announcing to the public in any way the intention to provide any such service, the use of any professional designation, or the use of any sign, card, circular, device, vehicle, or advertisement, as a provider of any such services shall be prima facie evidence of engaging in the practice of a contractor or a plumber or mechanical professional.

Greg Ploeger: *When a licensee comes before the board they have a lot to lose, potentially, and they do not understand the procedures. If the board makes an error on procedures the Administrative Law Judge can assist in clarifying or correcting the error. If that licensee is not happy with the outcome, they are going to look for anything that could possibly enhance their view point. Since Matt Oetker will be prosecuting, any conversation with him, laughing, showing of comradely before or after any breaks can be interpreted by licensee negatively.*

A ten minute break taken

Confidentiality Review –September Lau

All investigative information gathered is confidential as stated in Statue 272.6 4. Confidentiality protects the licensee if there has been a complaint against them. Board members have protection from civil liability so long as they are acting in good faith. Investigative information is confidential at all times, cannot be discussed with anyone outside the board and the board staff. Board members should not let the physical materials get into the hand of individuals that should not have them. Each board member should provide to Dan a mailing address that they have control of materials when they arrive, to assure no one else has access to them.

Statue 272.6 4 In order to assure a free flow of information for accomplishing the purposes of this section, and notwithstanding section 622.10, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of a licensing board or peer review committee acting under the authority of a licensing board or its employees or agents which relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee and the boards, their employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the coordinated licensure information system provided for in the nurse licensure compact contained in section 152E.1 or the advanced practice registered nurse compact contained in section 152E.3, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of a licensing board or its employees

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or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. However, a final written decision and finding of fact of a licensing board in a disciplinary proceeding, including a decision referred to in section 272C.3, subsection 4, is a public record.

Sue Salsman: *I have an email address that is my family's, it is not just mine would that be a problem?*
If you are alright with information being sent to your family email address, and your family knows the information is confidential, that is a judgment call.

Matt Oetker: I believe all discipline information is being sent certified at this point. At a future date there will be some electronic sharing of records to the board. An individual will log into a secure site that only they have access to, they will log in, retrieve the information for review and close it and get back out of it. We are not comfortable sending an email to your account for that very reason.

The information received is to be used in closed session, after a decision is made, information will be returned to staff for disposal. At the very end of a contested case process you will produce a formal order and decision. In closed session after a hearing you will deliberate and instruct the ALJ what you would like that order to contain. Until you accept that document as your own, communication shall remain ex parte.

Dan: In regards to taking back information, the way it is set up right now is the information is sent certified, following meeting information is returned to Dan for disposal. Pending information will also return to Dan and he will bring to the appropriate meeting.

KEN: *We have had some indications from those that have filed a complaint about the progress of the complaint. We are not allowed to share information with complainant. The final decision and statement of charges will become public information. Suppose we receive a complaint that does not warrant disciplinary action, what if anything, of that will become available to the public?*
Nothing. The complainant will receive a letter if the case is closed.

SUE: *When I first received the information, I thought this would be a great learning opportunity. I would go out to the court search, and then I saw you had that information. Board members should do no investigating. What about prior to the hearing can we check some things online?*

Dan stressed that any information you would like to see included as part of the investigation should be sent as a request to Dan. Dan will do all of the investigation. When a complaint is coming before the board, it has been reviewed by the Discipline Committee with a recommendation of action to be taken.

Waiver of Administrative Rule – Stanley Saastamoinen

This gentleman is one of a limited number that were unable to complete the master's exam by the November 15, 2010 deadline under the special terms established by the 1010 legislative session. He did not have the correct references when he went to take the exam, therefore Prometric would not allow him to take the exam. About that same time, exams and references were updated. When he did acquire the appropriate references, Prometric may not have had space to allow him to take the exam.

Matt explained a waiver is a request to alter the board's administrative rules. The board does not have the authority to waive a statute; the board only has authority to waive rules.

Matt cited **641—31.4(17A,105,272C) Criteria for waiver or variance.**

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In response to a petition completed pursuant to rule 641—31.6(17A,105,272C), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

Ken commented the Iowa Legislature last year put language in the statute:

641—29.8(83GA,HF2531) Master license—exception through September 30, 2010.

29.8(1) Notwithstanding paragraph 29.6(3) “k,” through September 30, 2010, the board may grant permission to sit for a master examination in one or more applicable discipline to an applicant who has not previously been licensed as a master or journeyman in the applicable discipline and who possesses at least 48 months of work experience equivalent to that of a licensed master in the applicable discipline between September 30, 2004, and September 30, 2010. For purposes of this subrule, an applicant shall demonstrate the requisite work experience by providing a notarized employer verification statement on a form provided by the board, notarized client verification statements on a form provided by the board, or tax documents such as a Schedule C, Form 1099, Form W-2, or other tax forms establishing such requisite work experience. Upon board verification of work experience, the board shall return any submitted tax documents to the applicant via certified mail. By the rule making process the board inserted that applications have to be submitted by September 30, 2010 and the examination must be passed by November 15, 2010. That date, November 15, 2010 was selected by this board for a number of reasons.

As I read the petition, he is seeking modification of the November 15, 2010 date for his situation.

Matt cited **641—31.7(17A,105,272C) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the board’s administrator, a committee of the board, or a quorum of the board.

Following a lengthy discussion, the board agreed to table the petition and request additional information. Ken made the following motion:

Ken Sharp made a motion that Cindy Houlson contact the applicant (under 31.7) and request the applicant to provide additional information as required in 31.6 of our administrative rules.

Tom Day seconded

No further discussion was held

Vote: All ayes

Motion: Carried

Committee Reports and Recommendations for Actions:

Jane requested reports from committees that have met during the last month.

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Applications and Fees Jane Hagedorn, committee chair

This committee met on Dec. 6th to review a renewal notification letter that will go out to the licensees 60 days before their license expires; the renewal application and instructions that go with the application. Each board member should have received a copy of the almost final renewal application, please send concerns to Susan Van Horn. This application will be out by December 30th.

CEU Committee Jane Hagedorn, committee chair

Jane reported that this committee met Dec 16 and December 20th. We continue to review both instructors and courses and refine changes to Chapter 30.

To date:

1040 total applications received	332 instructors approved
540 courses approved	20 E courses approved
73 applications in an incomplete status (believe we approved many of those yesterday)	
75 no further information received within 30 days	

Chapter 29 Ron Masters, committee chair

Chuck Thomas reported in Ron Masters absence (Ron had a previous commitment). This committee met on Dec. 6th and discussed **29.6(3)** Examination application requirements for suggested change.

29.6(3) Examination application requirements. "A journey person examination applicant may apply to sit for the examination up to 60 days prior to completion of the 48 months of required apprentice credit, which shall include the granting of advanced standing or credit for previously acquired experience, training, or skills." Requirements for specialty licenses were also discussed.

Discipline Committee Jane Hagedorn, committee chair

This committee met on Nov. 16th and continues to review cases and complaints. We plan to go into closed session, similar to last month's meeting. We anticipate that same process in order to move cases and investigations forward. We did make a strategy change, originally we requested Dan to take cases in order of which they came in to allow Dan to prioritize as he sees fit to best utilize his time.

Other Business

Ken Sharp reported our new engineer is scheduled to start Dec. 27. John Kelly is from DAS with prior experience in the plumbing and mechanical industry. At some point in the future John may be a logical candidate to replace Ken on this board.

Ken reported we have received approval to hire two full time clerk specialists. One position will be for the CEUs, and will be posted internally. The other position will provide some needed assistance as we move into renewals.

Ken reported the State-wide Inspection Study Report has been submitted to the IDPH Legislative liaison. She is planning to send the report to the legislative body. There will be some specific targeted distribution to the key legislatures that were involved in creating the board and helping us with the legislation to set up that study committee. Copies will be routed to board members.

Ken reported Tom Newton has been replaced under the Brandstad administration with Dr. Mariannette Miller-Meeks, an ophthalmologist from Ottumwa. Dr. Miller-Meeks has set up the first staff meetings

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this morning with Director Newton and Deputy Director Jones. I would anticipate over the next two to four weeks we will start to learn a lot more about Dr. Miller-Meeks' priorities for the department.

Ken reported his position is an at-will position and serves at the pleasure of the department director, which is something that is subject to change on very short notice. I have not received any indication that I will be asked to leave the department at this time. If that would be the case, the board members will be notified. I've had no discussions with the new department director; I have not met her and have no indications of what if any changes will be made to staffing.

Mick Gage: *Can I ask why we are holding up contractor and specialty licensing other than the computer stuff?*

Ken: That is the sole reason. I have had that discussion with them. They recognize the importance. The challenge that we have is that we as a state agency are very restricted on what we have in regards to contracting options for external computer software. We have given very clear direction to municipalities. We do not have the same flexibility as private industry does, due to government regulations.

Stuart Crine reported that he will be resigning from the board at the end of this month due to health issues. I have had to look at duties I have that can be delegated. It is our intention to replace me with Blas Hernandez. This is a position assigned by the commissioner of public safety.

NEXT MEETING:

Chuck Thomas made a motion to move next month's Board meeting from January 18, 2011 to January 25, 2011, due to holiday falling on Monday, January 17, 2011 and sub-committee meetings are normally held the day before the board meeting.

Tom Day seconded

No further discussion was held

Vote: All ayes

Motion: Carried

Public Comment

Mike Macula: *Asked about the renewal software for licensing.*

Susan Van Horn reported we got the initial round of code on Friday. I spent the weekend testing to make sure the CEU and the discount portions were correct. There were a significant amount of bugs, with about 75% working correctly. Corrections were sent to Iowa Interactive on Monday to incorporate the changes. We should have fixes made by this morning, and then testing can begin again. The first round of renewal letters were printed on December 19th, 75 days prior to the expiration date, and will be mailed on December 30th.

Was there a final decision made if I have two licenses with separate expiration dates?

Jane responded: There two options to keep two separate dates or combined those dates. There are advantages to combining dates they would qualify for discount in fees and the CEU requirements are as we have said, the maximum number they would need would be 14 or 16 hours regardless of holding two or four licenses. If licensee chooses to remain on two separate dates the licenses are considered individual licenses and each discipline will be required to have eight hours of CEUs. CEUs are not transferable from one license to another. This information will be in the renewal notice.

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Susan Van Horn: The first renewal notice is two pages long and gives information about late fees, CEUs and how to combine your licenses. We are trying to contact individuals that have applied under multiple license numbers to allow combining into one number. If they have multiple licenses with multiple expiration dates under the same license number, the system will automatically prompt licensee to combine them together, however corrections for multiple license holders that have more than one number, will need to be done manually.

The board a couple years ago made a decision to review 70% of the applications, do you (Dan) know the number of applications you have reviewed.

Dan Hostetler: Right now the focus is on complaints. I have not received direction to review applications. Some of the complaints revolve around that situation.

Matt: Dan receives direction from this board.

Jerry Hintz: When a licensee gets a letter for renewal, can they go ahead and renew or must they wait until the expiration date?

Jane: It was our intent that when it is up and running once they get that letter, that they should be able to renew their license at that time.

Susan Van Horn: The application for renewal will be available 60 days prior to the expiration date. We have received a January 25th deadline. There is a bit of a lapse with the first people that become eligible to renew. On the very first group of individuals getting renewal notices there may be about a two week window where they will not be able to get into the system because the application isn't live yet. There will be a time frame prior to when the first licenses were issued.

Susan Salsman: *Is the renewal date going to be the same as the expiration date?*

Yes, the renewal date and expiration date are one in the same.

Kevin Kruse: *Is renewal letter to be posted on the website?*

Ken: We have not had that asked of us, therefore has not been discussed. Cindy and Susie will check to see how the information contained in the renewal letter can be posted on the website.

If I have multiple licenses with different expiration dates, consolidating to the first date, what happens if I have not completed all of the required CEUs?

Jane: Individuals will have to have CEU requirements completed by the first expiration date.

Going forward is there a game plan for hiring other inspectors or filling other positions?

Ken: Beyond these positions there has not been a discussion. There is some hesitation on my part until we know what the new administration is going to look like. The new administrative is not overly supportive of additional state workers. Until we have a better handle on what that means. I have had some conversations with Dan as far as his work load. We will not be hiring any inspectors until legislature directs us to do so.

Jane: *Do you view audits as part of an investigator's responsibility?*

Ken: I don't know who else it would be. With the licenses issued and we have heard from Matt and the Administrative Law Judge these are treated as investigations at this point. That would require a significant amount of work by this board. We will have to look at this as a Board and certainly as an agency. If there is a perception of misrepresentation of the facts back when that discussion was held, I apologize, that was never the intent. The fact of the matter remains based upon the information we have heard from the process we have learned about dealing with licensees at this point it is an

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investigation. The only mechanism for us to take action against a licensee is through an investigative process and disciplinary action.

Is it your intent to do any auditing?

I believe we have had that discussion that we are looking at the CEU requirements very heavily. Recognizing the auditing challenges that we have come to know, the only way we can deal with that at this point is to look at renewals. There was a grandfathering period that allowed many of these individuals to have licenses. Some may have slipped through, that will happen with any grandfathering provision. The best thing for us to do at this point is to make sure those individuals are raising their standards and qualifications and their knowledge in the industry. We are going to be doing a real good job of focusing on those renewals. 5-10% on a regular basis of the submitted CEUs will be audited; we contact that licensee and tell him/her to provide hard copy evidence that you were attending the courses you said you were attending. I believe that is where we focus our time and energy now.

Closed Session Discipline Review

Chuck Thomas made a motion that the Board go into closed session for the purpose of reviewing and discussing records required or authorized by state or federal law to be kept confidential and discussing whether to initiate licensee disciplinary proceedings, pursuant to Iowa Code section 21.5(1)(a) and 21.5(1)(d)."

Ken Sharp seconded motion

Roll call vote all ayes: Thomas Day, Mick Gage, Jane Hagedorn,
Dennis Molden, Ken Sharp, Chuck Thomas and Brita Van Horne

Motion: Carried at 10:30 a.m.

Returned to Open Meeting at 11:17 a.m.

Chuck Thomas made a motion to continue investigating case number PM20090010,

Second: Brita Van Horne

No further discussion was held

Vote: All ayes

Motion: Carried

Next meeting scheduled for January 25, 2011 at the Department of Public Safety.

Adjournment

Tom Day made a motion to adjourn

Chuck Thomas seconded

No further discussion was held

Vote: All ayes

Motion: Carried