

Plumbing and Mechanical Systems Board Meeting
Tuesday, November 15, 2011
Jessie Parker Building, (Grant Room)
510 E. 12th Street, Des Moines, IA 50319

Call to Order – Chair, Jane Hagedorn called the meeting to order at 9:00 a.m.

Roll Call: Mick Gage, Jane Hagedorn, Blas Hernandez, Ron Masters, Dennis Molden,
Jenny Pitts, Susan Salsman, Ken Sharp and Chuck Thomas

Staff: Cindy Houlson, Matt Oetker, September Lau, Drew Bredholt, Jerry Viers
and Mary Swinehart

Absent: Jim Cooper and Brita Van Horn

Corrections to October 18, 2011 Minutes:

Page 1: Change: 'Change on order of agenda' – change word 'on' to 'in'

Page 4: Under Waiver of Administrative Rule/Jason Franco - misspelled Selvage

Page 9: Under Chapter 29 Committee - misspelled Evan

Page 11: Under_Hydrionics Issue Update - misspelled Pettengill

Under Unlicensed Complaint Discussion-motion was seconded by Chuck Thomas

Delete PM20.....

Page 12: Delete PM 20

Under motion to move forward with notice of intent to resent Mr. Krall's Plumbing -
misspelled "rescind"

Under motion to move forward with notice of intent to resent Mr Ewert's HVAC -
misspelled "rescind"

Blas Hernandez made a motion to approve October 18, 2011 minutes with noted changes:

Susan Salsman seconded motion

Motion carried with unanimous Ayes

United Way of Central Iowa – Building New Careers Bob Brown

Mr. Brown presented information on United Way Programs for individuals to become self-sufficient, one avenue for that is to join the crafts. Tax benefit for Iowa employers for ex-felons is a program that provides up to \$20,000 of an individual salary for that year. Workforce development will work with anyone interested. Another program is to help individuals to get into their homes, working with many landlords, also tenant/landlord negotiations. Other programs include help with credit issues, driver's license reinstatement and child support. Mr. Brown's main objective is that should an individual present with issues that may need assistance there are no cost programs to assist individuals.

He thanked the board for individualized attention for those that have criminal backgrounds, looking at them on a case by case basis.

Reconsideration of Waiver 2011-27 Kerry Hombs

Mr. Hombs provided additional information and ask the board to reconsider his waiver. Mr. Hombs provided additional information such as a copy of a Corp of Engineers map indicating where he and his mother's home are located with the prediction that there would be three feet of water in their homes, with no flood insurance. A FEMA map presented indicates his home was in control section, allowing entry only during certain times of the day. His company assisted many elderly individuals. He was forced to purchase another office property due to threat of flooding of present property. There were many meetings with Corp of Engineers, FEMA and local authorities regarding safe evacuation, predictions, etc.

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Mr. Hombs asked for understanding and reconsideration. He has CEUs completed and attempted to reapply online and was unsuccessful.

Jane Hagedorn indicated the board will reevaluate the decision that was presented at the October meeting, reconsidering the similarities between Mr. Franco's request and Mr. Hombs' case. The board examined four factors set forth by rule. The burden of proof lies with the petitioner.

1. *Why would applying the rule result in an undue hardship on petitioner?* Mr. Hombs has demonstrated unique circumstances that would result in undue hardship.
2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioner has demonstrated that waiving this rule would not harm the rights of any other person.
3. *Whether or not this has been set by statute?* This was a rule set by the board and as such the board has the authority to waive this rule.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?* Requiring a licensee to demonstrate competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

Jenny Pitts made a motion that we amend the motion made at the October Meeting, granting Mr. Hombs' 30 days from today to complete his application with \$60 penalty fee and \$25 paper application fee.

Chuck Thomas seconded the motion.

Motion carried with Unanimous Ayes

Waiver of Administrative Rule

Daniel Foertsch, Anthony Woods & Adam Foertsch

These gentlemen submitted letters requesting an audience with the board at the October Board Meeting. At that time they were offered the opportunity to file a waiver. Since that time, they have completed a waiver and are presenting at this meeting. As the facts are substantially the same these three will be handled as one.

Susan Salsman chairperson from Administrative Rules Committee reported the company receptionist received renewal notifications and filed them. Later they were found and they tried to renew their licenses and discovered it was beyond 60 days expired at that point. The Committee did not find it was unique in reference to other waivers that have been reviewed and unanimously recommended denial..

An extensive discussion followed regarding the requirement to retest when a license lapsed for 61 days and beyond. It was agreed that this requirement should be re-visited; however this is not the correct forum. Board members agreed to re-visit this requirement at the committee level.

This waiver will be taken under consideration with the rules that are in place today.

The board examined four factors set forth by rule.

1. *Why would applying the rule result in an undue hardship on petitioner?* These gentlemen have not demonstrated unique circumstances that would result in undue hardship as there were ample opportunities to complete requirements.
2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioners have not demonstrated that waiving this rule would not harm the rights of any other person, as all licensees are subject to the same rules.
3. *Whether or not this has been set by statute?* This is a matter of law that the board does have authority.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?* Requiring demonstration of competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

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Chuck Thomas made a motion to deny the waiver for:

- a. Daniel Foertsch
- b. Anthony Woods
- c. Adam Foertsch

Susan Salsman seconded the motion.

Motion carried with Unanimous Ayes

Thomas Oswald

Susan Salsman chairperson for Administrative Rules Committee reported we did not find that the letter specified that the licensee forgot to renew, no extenuating circumstances were presented. It was a unanimous committee recommendation to deny this waiver.

Mr. Oswald was working out of town on the 61st day of license expiration, stated time just got away from him. When he heard (at the union hall) the fees had been waived he assumed everything was good to go. He did have CEUs completed. He submitted his application the end of June, first of July (date stamped July 7th). He claimed he had not received or just missed a renewal notification as he was working in St. Louis at the time.

Hydronics and Plumbing licenses expired April 8, 2011 and HVAC expires November 30th. He has not renewed HVAC license as yet, as he thought all of his licenses had expired.

The board examined four factors set forth by rule.

1. *Why would applying the rule result in an undue hardship on petitioner?* Mr. Oswald has not demonstrated unique circumstances that would result in undue hardship as there were ample opportunities to complete the requirements.
2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioner has not demonstrated that waiving this rule would not harm the rights of any other person, as all licensees are subject to the same rules.
3. *Whether or not this has been set by statute?* This is a matter of law that the board does have authority.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?* Requiring a licensee to demonstrate competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

Ron Masters made motion to deny Mr. Oswald's waiver

Susan Salsman seconded

Motion carried with Unanimous Ayes

Mr. Oswald had questions about the exams. The process was explained to Mr. Oswald.

Leslie McCargar

Susan Salsman chairperson for Administrative Rules Committee reported the information reviewed from Mr. McCargar was that he thought his boss would take care of renewal and the boss did not. The committee saw no extenuating circumstances like the others we have reviewed. It was a unanimous committee recommendation to deny this waiver.

Mr. McCargar was not present.

The board examined four factors set forth by rule.

1. *Why would applying the rule result in an undue hardship on petitioner?* Mr. McCargar has not demonstrated unique circumstances that would result in undue hardship as there were ample opportunities to complete requirements.
2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioner has not demonstrated that waiving this rule would not harm the rights of any other person, as all licensees are subject to the same rules.

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3. *Whether or not this has been set by statute?* This is a matter of law that the board does have authority.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?*
Requiring a licensee to demonstrate competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

Mick Gage made a motion to deny Mr. McCargar's waiver.

Ron Masters seconded

Motion carried with Unanimous Ayes

Troy Wingert

Susan Salsman chairperson for Administrative Rules Committee reported when reviewing submitted information the committee had very little to go on, therefore the committee recommendation was to deny this waiver.

Mr. Wingert commented the receptionist in the office sent in five renewal applications the same day, unfortunately only four arrived. The application has not been returned to the office and as far as he knows it has not been received by the Plumbing and Mechanical Office. It was sent in plenty of time, along with four others by Rasmussen Mechanical. Mr. Wingert did check with the post office without success. He did have documentation from the receptionist that she had mailed all five applications on the same day. Mr. Wingert felt it was beyond his control. If he is granted this waiver this year he will mail certified next year to be sure it is received.

The other four applications were checked against the mail log and were received within a week of each other.

The board examined four factors set forth by rule.

1. *Why would applying the rule result in an undue hardship on petitioner?* Mr. Wingert has demonstrated unique circumstances in that his renewal application was sent at the same time as four others, different envelopes and his application was not received.
2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioner has demonstrated that waiving this rule would not harm the rights of any other person, as all licensees are subject to the same rules.
3. *Whether or not this has been set by statute?* This is a matter of law that the board does have authority.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?*
Requiring a licensee to demonstrate competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

Ron Masters made a motion to approve Mr. Wingert's waiver. He is required to submit his application within 30 days with no late fee nor paper application fee.

Dennis Molden seconded

Motion carried with Unanimous Ayes

Rodney Butikofer

Susan Salsman chairperson for Administrative Rules Committee reported based upon the information provided there were not good time frames, as situations happened after the license expiration date, therefore the committee recommendation was to deny this waiver.

Mr. Butikofer was not present.

The board examined four factors set forth by rule.

1. *Why would applying the rule result in an undue hardship on petitioner?* Mr. Butikofer has not demonstrated unique circumstances that would result in undue hardship as there were ample opportunities to complete requirements.

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2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioner has not demonstrated that waiving this rule would not harm the rights of any other person, as all licensees are subject to the same rules.
3. *Whether or not this has been set by statute?* This is a matter of law that the board does have authority.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?* Requiring a licensee to demonstrate competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

Ron Masters made a motion to deny Mr. Butikofer's waiver.

Susan Salsman seconded

Motion carried with Unanimous Ayes

Richard Kuckes

Susan Salsman chairperson for Administrative Rules Committee reported the committee agrees he has a lot of challenges in his life, unfortunately the items that could be dated, the business burning and daughter's emergency surgery were months after the 60 days lapsed timeframe. As noted on his account his username and password were reset, therefore he did have the opportunity to renew his license within the 60 day timeframe. The committee's unanimous recommendation was to deny this waiver.

The board examined four factors set forth by rule.

1. *Why would applying the rule result in an undue hardship on petitioner?* Mr. Kuckes has not demonstrated unique circumstances that would result in undue hardship as there were ample opportunities to complete requirements.
2. *Would waiving the rule prejudice or harm the rights of any other person?* The petitioner has not demonstrated that waiving this rule would not harm the rights of any other person, as all licensees are subject to the same rules.
3. *Whether or not this has been set by statute?* This is a matter of law that the board does have authority.
4. *How will the public health, safety and welfare be protected if the waiver request is granted?* Requiring a licensee to demonstrate competence in their respective discipline is the means by which the board can assure protection of public health, safety and welfare.

Ron Masters made a motion to deny Mr. Kuckes' waiver.

Susan Salsman seconded

Motion carried with Unanimous Ayes

Committee Reports and Recommendations for Actions:

Application & Fees Committee

Jane Hagedorn, committee chair

Jane reported this committee has met a couple of times this month and will meet today following the board meeting to discuss the exam requirement for lapsed license.

CEU Committee

Jane Hagedorn, committee chair

Jane reported this committee met yesterday and we continue to review applications for instructions and courses.

Total applications received	1,567
Instructor applications approved	440
Course applications approved	906
E courses approved	47
Applications waiting for approval	35

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Applications that have been returned due to inadequate information and have received no response within 30 days	139
Courses expired	144

90 day rule was reviewed and it was concluded that both applications online and applications via mail have equal opportunity.

E-course two hour restriction was discussed. There is good merit with e-courses that have been submitted and it would be advantageous for individuals in rural areas especially to allow more than two hours for e-courses. Thoughts from the board were solicited. Many of the board members agreed this would be advantageous. This topic may be revisited at a later date.

Chapter 29 Committee

Ron Masters, committee chair

Ron reported this committee met yesterday and discussed Black Hills Energy's request to be considered as equivalency for specialty license. This committee recommends adoption of Black Hills Energy as an equivalency for HVAC specialty license.

Mick Gage made a motion to accept Black Hills Energy as equivalent for HVAC specialty license.
Chuck Thomas seconded
Motion carried

Discipline Committee

Jane Hagedorn, committee chair

Jane reported this committee continues to meet on a regular basis and cases will be discussed later in this session,

Testing & Examination Committee

Chuck Thomas, committee chair

Chuck reported this committee continues to work with Prometric. Ken Sharp will be making a phone call to Prometric this week to stress the frustration on the part of the board, lack of responses and expectations of the contract.

Future meetings

The ARC will meet following this board meeting and as needed next month.
CEU Committee has not scheduled an in person meeting during the month of December. They will continue online review and if necessary will have phone conference call.

January Board Meeting: As Monday January 16th is a holiday for state employees, suggestion has been made to move the board meeting to either January 10th or January 24th to allow committee meetings on the Monday before the board meeting. The Board agreed that the January Board Meeting will be held on January 10th.

Committee meetings on January 9th will be held at the same times as past months.

When changes in committee meetings occur a revised calendar will be distributed to the board members.

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Hydronics Meeting

Ken Sharp reported a follow up meeting was held last Tuesday. Not a whole lot of progress was made during that meeting. There were no solid recommendations made. There is disagreement in what potential resolutions are. December 7th has been scheduled for the next meeting.

A couple of the larger industry groups wanted to do more polling with their members to ascertain impact if we go with some of the options that were being discussed. One of the options that seemed to have the most attraction was the very large chemical facilities that fall under some of the OSHA regulations PSM standard, (Process Safety Management Standard) looking at perhaps providing them an exemption from having to license individuals because of what is viewed as extensive OSHA regulatory measures in place for the installation, construction and maintenance of those facilities. That seems to be the most palatable discussion that was presented.

Another discussion has come up since last week; from local building and mechanical officials a recommendation to look at "do we need to have a separate hydronics license?" We have two trade codes; plumbing and mechanical should we not have just two trade licenses? That may be up for discussion among the industry groups.

In December the goal would be identification of areas the groups can agree upon and areas the groups cannot agree upon and if there are recommendations for the legislature to react to, we will do so, otherwise we will supply a report to Representative Pettengill about the challenges we are facing and identify the agreement and disagreement areas. Then let the industry partners work the legislative process to try to find resolution to those concerns.

Question: Is the PSM program a safety program, not an installation program? Ken responded that is where we need to have a better understanding. It is a safety program but the information that is being shared shows that the welders are required to have extensive testing and demonstrate skill sets before they are allowed to work on the job site, including installation. That is a lot of discussion around the hydronics issue. There are indications there may be other trades that the scope of work may affect. There is a difference of opinion about whether the PSM is only a safety program or whether or not through that safety management there are some implications on minimum qualifications for installation.

Contractor License

Ken Sharp reported there are reservations of moving forward with \$150 contractor license fee in light of this past legislative session. Ken would like to focus on discussions on: do we keep the fee where it is at and how do we proceed?

Question: Do we have a projection of what it will cost staff to go through the licensing of a contractor? That is how we came to the \$150 fee. Part of that was to be consistent with some of the other licenses.

Question: Budget information presented does not indicate each line item and the cost of each (number of employees, what it is costing, etc).

Ken responded the budget information that has been presented to the board is what is worked from. It is not broken out anymore than information presented. That is the budget for the state.

Break for half an hour.

Ken feels that opposition will be due to the cost and the fact that it is an additional license. An extensive discussion followed. Comments such as:

Larger companies will be grateful because they will not be required to purchase contractor licensing in each municipality they do work in, thus providing a cost saving

Cost exceeds what some small companies are paying each municipality to do the work

Electrical is \$350 and it was raised this year, how can we not say we can't be anywhere close to that?

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Looking at a city license for \$350 per year with a three year spread a contractor license at \$150 equals \$50 per year. These licenses will have to be reviewed on a yearly basis due to bonds on a yearly renewal basis.

We need fee structure based on reality, what is it going to cost to issue and maintain this license? There is more office work associated with this license because it has bonds and insurance certificates that will come due each year.

If we set the fee other than what it takes to maintain the license, the fee for individual licenses is going to supplement the cost of a contractor license. Whatever the cost to issue and maintain a contractor license is where the fee should be.

There will be legislation dealing with what this board does. Ken's concern is that should we roll the contractor license out January 1, the first person that calls one of the representatives or senators and complains about what this board is doing and we have not taken our time to do a lot of education with our licensees about what the contractor license is about, that hydronics legislation suddenly blows up. Ken is trying to balance the politics and the legislative session that will be coming out around hydronics and balancing how we roll out contractor licensing in a way to minimize the damage that may occur during the legislative session.

Ken Sharp interjected contractor licensing is not going to be ready January 1st. Ken would like to look at a plan to implement the contractor licensing, to handle software development and an educational portion for contractors, local city officials and legislatures. Justification for the cost of \$150 per contractor will have to be part of this plan.

Ken will present a proposal for contractor licensing at the January board meeting.

Question: Where is specialty licensing?

Specialty licensing is moving, the software development is ahead of the contractor licensing.

There were significant changes from the legislation that had to be incorporated, therefore specialty and contractor licensing had to be placed aside

UNLICENSED COMPLAINT DISCUSSION

Legal staff were requested to step out of the room.

Gary Billings had a hearing on Aug 17, 2011. He did not appear. Board imposed a \$500 civil penalty. October 5, 2011, Mr. Billings filed a motion to vacate the board's decision. ALJ concluded that motion would be upheld. It is the board's responsibility to set a new hearing date. Suggestion that hearing be held on February 22, 2012 (Wednesday following the board meeting) was presented.

Ron Masters made motion to allow the board chair to sign the order to set February 22, 2012 as the date for Gary Billings' hearing dependent upon availability of ALJ

Mick Gage seconded the motion

Motion carried with Unanimous Ayes

From the Discipline Committee

September Lau reported information is being distributed for an individual who is operating a plumbing business called Newman Plumbing and advertises in a newspaper as licensed and insured. He is not licensed in the state of Iowa. The recommendation from the Discipline Committee is to issue a civil penalty.

Penalty for two violations one practicing without a plumbing license and one for fraudantly advertising was agreed would be a \$250 for each violation equaling \$500.

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Denny Molden made a motion to move forward with notice of intent for Stacy Newman.
Mick Gage seconded.
Motion carried with Unanimous Ayes

September reported that two notice of intent in April and two in July did not get sent out within thirty days. The board has already given Jane approval to sign them. These orders will be issued soon.

Public Comment

Jane reported there was only one name on comment sign in and he is no longer in the room. I spoke to him and encouraged him to email or write a letter to Cindy, as it sounded as though the discussion he was seeking was quite valid. Mr. Gary Turwee is from Midwest Mechanical. There were three items he wanted to speak to:

1. In his area (712 area code) he held South Dakota, Minnesota and Iowa licenses. The major difference he saw was that the other two states have an enforcement arm. That meant a whole lot more in terms of renewing their licenses and keeping their licenses going. The conversation he is having with his peers in that area is that without the enforcement arm there are many folks who are not going to renew their license.
2. He felt one of the strongest things we are doing is the CEU requirement and he would not like to see that minimized in anyway.
3. He could let his license expire in South Dakota and Minnesota and there are no penalties until he pulls a permit. At that point it is just a matter of renewing without penalty. Couple that with the real enforcement teeth, inspectors.

Closed Session Discipline Review

Chuck Thomas made a motion that the Board will go into closed session to discuss complaints according to Iowa Code section 21.5(1) (d). In accordance with Iowa Code section 21.5, portions of the meeting, when confidential materials are reviewed, are held in closed session. The board may also hold closed sessions when it discusses whether to initiate disciplinary proceedings.

Susan Salsman seconded

Motion carried

Roll Call Vote: Ayes: Blas Hernandez, Ken Sharp, Chuck Thomas, Susan Salsman, Jenny Pitts, Dennis Molden, Ron Masters, Jane Hagedorn and Mick Gage

Nays: None

Returned to Open Session at 1:32 p.m

PM 2011006 Advanced Air Mechanical

Ken Sharp made a motion to close case PM 2011006 Advanced Air Mechanical

Susan seconded

Motion carried with Unanimous Ayes

Cindy Houlson reported that we have received a motion to continue for David Schieffer. Originally a hearing was scheduled following the December board meeting, however since Dan is not available, September has filed a motion to continue the hearing to a later date. This motion has gone to Mr. Schieffer and he has ten days to respond. The amended motion, should it be accepted by Mr. Schieffer will be presented at the January Board Meeting.

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Jane commented that the date for the January Meeting has been set and committee meetings set as much as possible.

Ken Sharp reported we have received requests from a couple of attendees after the last board meeting. Some of those that attend the board meetings regularly would like to hear the board's current business and not sit through the waiver process. Suggestion was made to rearrange the agenda to accommodate. For the January meeting we will look at moving waivers to after the board's typical agenda items including public comment.

Mick Gage made a motion for adjournment

Susan Salsman seconded the motion

Motion carried with Unanimous Ayes

Adjournment 3:38 p.m.

There will be no meeting in December

Next meeting is scheduled for January 10, 2012 at University Hygienic Laboratory, DMACC, 2220 S. Ankeny Blvd. Ankeny, IA Iowa Lab Facility Rooms 207 & 208