

**Florida Board of Professional Engineers
Rules Committee Minutes
January 13, 2016
8:30a.m. – FBPE Board Office
Tallahassee, FL**

1. Call to Order

Mr. Bracken called the meeting to order. Ms. Raybon called roll.

2. Roll Call, Determination of Quorum and Address Absences

Committee Members Present:

William Bracken, P.E., S.I., Chair
Kevin Fleming, P.E.
Warren Hahn, P.E.
Elizabeth Howard, Public Member

Committee Members Absent:

Roland Dove, P.E.

Others:

Larry Harris, Assistant Attorney General, Board Counsel

Staff Present:

Zana Raybon, Executive Director
John Rimes, Prosecuting Attorney
Rebecca Sammons, Assistant Executive Director



3. Introduction of Guests and Announcements

4. Review/Open **Rule 61G15-18.011 – Definitions** – (define FBC so that we can move forward with changing the reference in individual rules once this rule has been adopted)

Mr. Harris stated that there are several references in 61G15 to the “Florida Building Code” and according to JAPC we need to have a copy of the FBC for each time we reference it. Mr. Harris stated that if we define “FBC” then we will only need to provide a copy to the Department of State and have a copy on hand at the board office.

Mr. Harris reviewed the proposed rule amendment to 61G15-18.011:

61G15-18.011 Definitions.

As used in Chapter 471, F.S., and in these rules where the context will permit the following terms have the following meanings:

(1) "Responsible Charge" shall mean that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority. The engineer in responsible charge is the Engineer of Record as defined in subsection 61G15-30.002(1), F.A.C.

(a) The degree of control necessary for the Engineer of Record shall be such that the engineer:

1. Personally makes engineering decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever engineering decisions which could affect the health, safety and welfare of the public are made. In making said engineering decisions, the engineer shall be physically present or, if not physically present, be available in a reasonable period of time, through the use of electronic communication devices, such as electronic mail, videoconferencing, teleconferencing, computer networking, or via facsimile transmission.

2. Judges the validity and applicability of recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.

3. Approves the inclusion of standard engineering design details into the engineering work. Standard engineering design details include details mandated or directed to be contained in engineering documents by governmental agencies (such as the Florida Department of Transportation); and details contained in engineering design manuals and catalogues that are generally accepted as authoritative in the engineering profession. In order to approve the inclusion of such details the Engineer of Record must conduct such reasonable analysis of the content of the standard detail(s) as is necessary in the sound professional judgment of the Engineer of Record to be assured that the inclusion of such detail(s) into the engineering work is acceptable engineering practice.

(b) Engineering decisions which must be made by and are the responsibility of the Engineer of Record are those decisions concerning permanent or temporary work which could create a danger to the health, safety, and welfare of the public, such as, but not limited to, the following:

1. The selection of engineering alternatives to be investigated and the comparison of alternatives for engineering works.

2. The selection or development of design standards or methods, and materials to be used.

3. The selection or development of techniques or methods of testing to be used in evaluating materials or completed works, either new or existing.

4. The development and control of operating and maintenance procedures.

(c) As a test to evaluate whether an engineer is the Engineer of Record, the following shall be considered:

1. The engineer shall be capable of answering questions relevant to the engineering decisions made during the engineer's work on the project, in sufficient detail as to leave little doubt as to the engineer's proficiency for the work performed and involvement in said work. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that the engineer in responsible charge made them and possessed sufficient knowledge of the project to make them. Examples of questions to be answered by the engineer could relate to criteria for design, applicable codes and standards, methods of analysis, selection of materials and systems, economics of

alternate solutions, and environmental considerations. The individuals should be able to clearly define the span and degree of control and how it was exercised and to demonstrate that the engineer was answerable within said span and degree of control necessary for the engineering work done.

2. The engineer shall be completely in charge of, and satisfied with, the engineering aspects of the project.

3. The engineer shall have the ability to review design work at any time during the development of the project and shall be available to exercise judgment in reviewing these documents.

4. The engineer shall have personal knowledge of the technical abilities of the technical personnel doing the work and be satisfied that these capabilities are sufficient for the performance of the work.

(d) The term “responsible charge” relates to engineering decisions within the purview of the Professional Engineers Act and does not refer to management control in a hierarchy of professional engineers except as each of the individuals in the hierarchy exercises independent engineering judgement and thus responsible charge. It does not refer to administrative and personnel management functions. While an engineer may also have such duties in this position, it should not enhance or decrease one’s status of being in responsible charge of the work. The phrase does not refer to the concept of financial liability.

(2) “Engineering Design” shall mean that the process of devising a system, component, or process to meet desired needs. It is a decision-making process (often iterative), in which the basic sciences, mathematics, and engineering sciences are applied to convert resources optimally to meet a stated objective. Among the fundamental elements of the design process are the establishment of objectives and criteria, synthesis, analysis, construction, testing and evaluation. Central to the process are the essential and complementary roles of synthesis and analysis. This definition is intended to be interpreted in its broadest sense. In particular the words “system, component, or process” and “convert resources optimally” operate to indicate that sociological, economic, aesthetic, legal, ethical, etc., considerations can be included.

(3) The term “evaluation of engineering works and systems” as used in the definition in the practice of engineering set forth in Section 471.005(7), F.S., includes but is not limited to services provided by testing laboratories involving the following:

(a) The planning and implementation of any investigation or testing program for the purpose of developing design criteria either by an engineering testing laboratory or other professional engineers.

(b) The planning or implementation of any investigation, inspection or testing program for the purpose of determining the causes of failures.

(c) The preparation of any report documenting soils or other construction materials test data.

(d) The preparation of any report offering any engineering evaluation, advice or test results, whenever such reports go beyond the tabulation of test data. Reports which document soils or other construction materials test data will be considered as engineering reports.

(e) Services performed by any entity or provided by a testing laboratory for any entity subject to regulation by a state or federal regulatory agency which enforces standards as to testing shall be exempt from this rule except where the services otherwise would require the participation of a professional engineer.

(4) “Certification” shall mean a statement signed and sealed by a professional engineer representing that the engineering services addressed therein, as defined in Section 471.005(6), F.S., have been performed by the professional engineer, and based upon the professional engineer’s knowledge, information and belief, and in accordance with commonly accepted procedures consistent with applicable standards of practice, and is not a

guaranty or warranty, either expressed or implied.

(5) The term "principal officer(s) of the business organization" as used in Section 471.023(1), F.S., means the (a) President, Vice President, Secretary or Treasurer of the Corporation, or Limited Liability Company (LLC); or (b) any other officer who has management responsibilities in the corporation or LLC, as documented by the corporate charter or bylaws so long as such documentation provides that such officer is empowered to bind the corporation or LLC in all of its activities which fall within the definition of the practice of engineering as that term is defined in Section 471.005(7), F.S.

(6) The term "Florida Building Code" shall mean the Florida Building Code, 5th Edition, (2014), and which is incorporated herein by reference. The material incorporated is copyrighted material that is available for public inspection and examination at the Department of State, Administrative Code and Register Section, Room 701, The Capitol, Tallahassee, Florida 32399-0250, and at the Office of Codes and Standards, 1940 North Monroe Street, Room 90, Tallahassee, Florida 32399-0772.

Rulemaking Authority 471.008, 471.013(1)(a)1., 2. FS. Law Implemented 471.003(2)(f), 471.005(7), 471.005(6), 471.013(1)(a)1., 2., 471.023(1), 471.025(3), 471.033(1)(j) FS. History—New 6-23-80, Amended 12-19-82, 11-22-83, Formerly 21H-18.11, Amended 1-16-91, 4-4-93, Formerly 21H-18.011, Amended 12-22-99, 4-19-01, 10-16-02, 9-15-04, 6-5-08, 6-2-09, 2-2-12,_____.

Discussion followed.

Upon motion by Mr. Hahn, seconded by Mr. Fleming, the proposed rule amendment to Rule 61G15-18.011 was approved.

5. Review/Open **Rule 61G15-19.001** Grounds for Disciplinary Proceedings and **Rule 61G15-19.004 – Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances** (Adding disciplinary violation for renewing license without completion of required CE hours) (also, Legal has an issue that they would like to address under 19.001)

Mr. Harris discussed the proposed rule and the reason why it was brought before the board.

Mr. Harris reviewed the proposed rule amendment to 61G15-19.001 and 61G15-19.004:

61G15-19.001 Grounds for Disciplinary Proceedings.

(1) Pursuant to Section 471.033(2), F.S., the Board, to the extent not otherwise set forth in Florida Statutes, hereby specifies that the following acts or omissions are grounds for disciplinary proceedings pursuant to Section 471.033(1), F.S.

(2) A professional engineer shall not advertise in a false, fraudulent, deceptive or misleading manner. As used in Section 471.033(1)(f), F.S., the term "advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content" shall include without limitation a false, fraudulent, misleading, or deceptive statement or claim which:

(a) Contains a material misrepresentation of facts;

(b) Omits to state any material fact necessary to make the statement in the light of all circumstances not misleading;

- (c) Is intended or is likely to create an unjustified expectation;
- (d) States or implies that an engineer is a certified specialist in any area outside of his field of expertise;
- (e) Contains a representation or implication that is likely to cause an ordinary prudent person to misunderstand or be deceived or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;
- (f) Falsifies or misrepresents the extent of his education, training or experience to any person or to the public at large, tending to establish or imply qualification for selection for engineering employment, advancement, or professional engagement. A professional engineer shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments;
- (g) In any brochure or other presentation made to any person or to the public at large, incident to the solicitation of an engineering employment, misrepresents pertinent facts concerning a professional engineer's employer, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his works.

(3) A professional engineer, corporation or partnership shall not practice engineering under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility or status of those practicing thereunder or is otherwise false, fraudulent, misleading or deceptive within the meaning of subsection 61G15-19.001(2), F.A.C. When an individual is practicing engineering as a sole proprietor under a combination of his own given name, and terms such as "engineering," "and associates" or "and company," then said person is practicing engineering under a fictitious name, and must obtain a certificate of authorization pursuant to Section 471.023(2), F.S. The name of a corporation or partnership, if otherwise authorized, may include the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession. An engineering firm may not offer services to the public under a firm name which contains only the name of an individual not licensed as a professional engineer, registered architect, land surveyor, landscape architect, or professional geologist, in any state.

(4) A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

(5) A professional engineer shall not be incompetent to practice engineering. Incompetence in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall mean the physical or mental incapacity or inability of a professional engineer to perform the duties normally required of the professional engineer.

(6) A professional engineer shall not commit misconduct in the practice of engineering. Misconduct in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall include, but not be limited to:

- (a) Expressing an opinion publicly on an engineering subject without being informed as to the facts relating thereto and being competent to form a sound opinion thereupon;
- (b) Being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether or not

under oath or omitting relevant and pertinent information from such report, statement or testimony when the result of such omission would or reasonably could lead to a fallacious conclusion on the part of the client, employer or the general public;

(c) Performing an engineering assignment when not qualified by training or experience in the practice area involved;

1. All professional engineer asbestos consultants are subject to the provisions of Sections 455.301-.309, F.S., Chapter 471, F.S., and Rule 61G15-19, F.A.C., and shall be disciplined as provided therein.

2. The approval of any professional engineer as a "special inspector" under the provisions of Chapter 553, F.S., does not constitute acceptance by the Board that any such professional engineer is in fact qualified by training or experience to perform the duties of a "special inspector" by virtue of training or experience. Any such professional engineer must still be qualified by training or experience to perform such duties and failure to be so qualified could result in discipline under this chapter or Chapter 471, F.S.;

(d) Affixing a signature or seal to any engineering plan or document in a subject matter over which a professional engineer lacks competence because of inadequate training or experience;

(e) Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment with the exception of the payment of the usual commission for securing salaried positions through licensed employment agencies;

(f) Becoming involved in a conflict of interest with an employer or client, without the knowledge and approval of the client or employer, but if unavoidable a professional engineer shall immediately take the following actions:

1. Disclose in writing to his employer or client the full circumstances as to a possible conflict of interest; and

2. Assure in writing that the conflict will in no manner influence the professional engineer's judgment or the quality of his services to his employer or client; and

3. Promptly inform his client or employer in writing of any business association, interest or circumstances which may be influencing his judgment or the quality of his services to his client or employer;

(g) Soliciting or accepting financial or other valuable considerations from material or equipment suppliers for specifying their products without the written consent to the engineer's employer or client;

(h) Soliciting or accepting gratuities directly or indirectly from contractors, their agents or other parties dealing with the professional engineer's client or employer in connection with work for which the professional engineer is responsible without the written consent of the engineer's employer or client;

(i) Use by a professional engineer of his engineering expertise and/or his professional engineering status to commit a felony;

(j) Affixing his seal and/or signature to plans, specifications, drawings, or other documents required to be sealed pursuant to Section 471.025(1), F.S., when such document has not been personally prepared by the engineer or prepared under his responsible supervision, direction and control;

(k) A professional engineer shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices of a fraudulent or dishonest nature;

(l) If his engineering judgment is overruled by an unqualified lay authority with the results that the public health

and safety is threatened, failure by a professional engineer to inform his employer, responsible supervision and the responsible public authority of the possible circumstances;

(m) If a professional engineer has knowledge or reason to believe that any person or firm is guilty of violating any of the provisions of Chapter 471, F.S., or any of these rules of professional conduct, failure to immediately present this information to FEMC;

(n) Violation of any law of the State of Florida directly regulating the practice of engineering;

(o) Failure on the part of any professional engineer or certificate holder to obey the terms of a final order imposing discipline upon said professional engineer or certificate holder;

(p) Making any statement, criticism or argument on engineering matters which is inspired or paid for by interested parties, unless the professional engineer specifically identifies the interested parties on whose behalf he is speaking, and reveals any interest he or the interested parties have in such matters;

(q) Sealing and signing all documents for an entire engineering project, unless each design segment is signed and sealed by the professional engineer in responsible charge of the preparation of that design segment;

(r) Revealing facts, data or information obtained in a professional capacity without the prior consent of the professional engineer's client or employer except as authorized or required by law.

(s) Renewing or reactivating a license without completion of required Continuing Education (CE) hours and subject areas.

(7) A professional engineer who performs building code inspector or plans examiner duties in accordance with Section 471.045, F.S., or Sections 468.603(6), (7), F.S., shall be subject to disciplinary action for commission of the following:

(a) Violating or failing to comply with any provision of Chapter 471, F.S., or the rules of the Board of Professional Engineers;

(b) Having been convicted of a crime in any jurisdiction which directly relates to the practice of building code inspection or plans examination;

(c) Making or filing a false report or record, inducing another to file a false report or record, failing to file a report or record required by state or local law, impeding or obstructing such filing, or inducing another person to impede or obstruct such filing.

(8) A professional engineer shall not be negligent in the practice of engineering while performing duties as a special inspector. Negligence is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering and special inspection principles. Failure to comply with the procedures set forth in the Responsibility Rules for Professional Engineers Providing Threshold Building Inspection, as adopted by the Board of Professional Engineers, shall be considered non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the engineer.

Specific Authority 471.033(2) FS. Law Implemented 471.025(1), 471.033(1)(f), (g), (2) FS. History—New 1-8-80, Amended 6-23-80, 3-23-81, 6-4-85, Formerly 21H-19.01, Amended 5-14-86, 4-23-87, 11-8-88, 1-11-89, 7-3-90, 11-9-92, Formerly 21H-19.001, Amended 11-27-94, 5-20-02.

61G15-19.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners (including holders of certificate of authorization) guilty of violating Chapter 471, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of particular provisions of Chapter 471, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple counts of violations of the same provision of Chapter 471, F.S., or the rules promulgated thereto, or other unrelated violations contained in the same administrative complaint will be grounds for enhancement of penalties. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand which may be included in the final penalty at the Board’s discretion. All impositions of probation as a penalty shall include successful completion of the Engineering Law and Rules Study Guide, completion of a Board-approved course in Engineering Professionalism and Ethics, and an appearance before the Board at the option of the Board at the end of the probationary period. Other terms may be imposed by the Board at its discretion.

(2) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

VIOLATION	PENALTY RANGE	
	FIRST VIOLATION	SECOND AND SUBSEQUENT VIOLATIONS
(a) Violating any provision of Section 455.227(1), 471.025 or 471.031, F.S., or any other provision of Chapter 471, F.S., or rule of the Board or Department (Sections 471.033(1)(a) and 455.227(1)(b), (q), F.S.)	Reprimand and \$1,000 fine, to One (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
1. Failure to sign, seal or date documents (Section 471.025(1), F.S.)	Reprimand to one (1) year probation	Reprimand and one (1) year probation to Revocation
2. Sealing any document after license has expired or been revoked or suspended, or failure to surrender seal if the license has been revoked or suspended (Section 471.025(2), F.S.)	Suspended license: Revocation and \$1,000 fine Revoked license: Referral to State’s Attorney’s office	Suspended license: Revocation and \$5,000 fine Revoked license: Referral to State’s Attorney’s office
3. Signing or sealing any document that depicts work the licensee is not licensed to perform or which is beyond his or her profession or specialty therein or practicing or offering to practice beyond the scope permitted by law or accepting and performing responsibilities the licensee is	Reprimand, one (1) year probation and \$1,000 fine; to \$5,000 fine, one (1) year suspension and two (2) years probation	Reprimand, \$5,000 fine, one (1) year suspension and two (2) years probation to Revocation

not competent to perform (Sections 471.025(3), 455.227(1)(o), F.S., paragraphs 61G15-19.001(6)(c), (d), F.A.C.)		
4. Firm practicing without certificate of authorization (Section 471.023, F.S. and subsection 61G15-19.001(3), F.A.C.)	Reprimand, \$1,000 fine to one (1) year suspension and \$5,000 fine	Reprimand, one (1) year suspension and \$5,000 fine to Revocation
5. Failure to complete continuing education (Section 471.017(3), F.S. and Rule 61G15-22.001, F.A.C.)	Reprimand and \$1,000 fine, to Suspension until licensee demonstrates compliance	Suspension until licensee demonstrates compliance to Revocation
6. Practicing engineering without a license or using a name or title tending to indicate that such person holds an active license as an engineer (Sections 471.031(1)(a), (b), F.S.)	\$1,000 fine to \$5,000 fine	\$5,000 fine to \$10,000 fine to referral to State Attorney's Office
7. Presenting as his or her own the license of another (Section 471.031(1)(c), F.S.)	\$1,000 fine to \$5,000 fine	\$5,000 fine to \$10,000 fine and referral to State Attorney's Office
8. Giving false or forged evidence to the Board or concealing information relative to violations of this chapter (Sections 471.031(1)(d), (g), F.S.)	\$1,000 fine to \$5,000 fine and suspension	Reprimand and \$5,000 fine to Revocation
9. Employing unlicensed persons to practice engineering or aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Sections 471.031(1)(f) and 455.227(1)(j), F.S.)	\$1,000 fine and reprimand; to \$5,000 and suspension	Reprimand and \$5,000 fine to Revocation
10. Having been found liable for knowingly filing a false complaint against another licensee (Section 455.227(1)(g), F.S.)	\$1,000 fine and reprimand; to \$5,000 per count and suspension	Reprimand and \$5,000 fine to Revocation
11. Failing to report a person in violation of Chapter 455, Chapter 471, F.S., or the rules of the Board or the Department (Section 455.227(1)(i), F.S.)	Reprimand to \$5,000 and suspension for one (1) year	Reprimand and \$5,000 fine to Revocation

12. Failing to perform any statutory or legal obligation (Section 455.227(1)(k), F.S.)	Depending on the severity of the offense, from a Reprimand to Revocation	Depending on the severity of the offense, from a Reprimand to Revocation
13. Exercising influence on a client for financial gain (Section 455.227(1)(n), F.S.)	Reprimand to one (1) year suspension and \$5,000 fine	Reprimand and \$5,000 fine to Revocation
14. Improper delegation of professional responsibilities (Section 455.227(1)(p), F.S.)	\$1,000 fine and probation for one (1) year, to suspension	Reprimand and \$5,000 fine to Revocation
15. Improperly interfering with an investigation or inspection or disciplinary proceeding (Section 455.227(1)(r), F.S.)	\$1,000 fine and probation for one (1) year; to suspension	Reprimand and \$5,000 fine to Revocation
(b) Attempting to procure a license by bribery, fraudulent misrepresentation, or error of the Board or Department (Sections 471.033(1)(b) and 455.227(1)(h), F.S.)	One (1) year suspension and \$1,000 fine, to Revocation if licensed; if not licensed, denial of license and referral to State Attorney	Revocation and \$5,000 fine if licensed; if not licensed, denial of license and referral to State Attorney
(c) Having a license to practice engineering acted against or denied by another jurisdiction (Sections 471.033(1)(c) and 455.227(1)(f), F.S.)	Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes	Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes
(d)1. Being convicted or found guilty of, or entering a plea of nolo contendere to a crime which relates to the practice or ability to practice (Sections 471.033(1)(d) and 455.227(1)(c), F.S.)	Depending on the severity of the crime, from Reprimand \$1,000 fine, and one (1) year probation, to Revocation	Depending on the severity of the crime, from one (1) year suspension with 2 years probation to Revocation
2. Conviction of crime related to building code inspection or plans examination (paragraph 61G15-19.001(7)(a), F.A.C.)	Reprimand \$1,000 fine, and one (1) year probation	One (1) year suspension with 2 years probation to Revocation
(e) Knowingly making or filing a false report or record, failing to file a report or record required by law, impeding	Reprimand and \$1,000 fine to one (1) year suspension, two (2) years probation	One (1) year suspension, 2 years probation, and \$1,000 fine, to Revocation and \$5,000 fine

or obstructing such filing (Sections 471.033(1)(e), 455.227(1)(l), F.S. and paragraph 61G15-19.001(7)(c), F.A.C.)		
(f) Fraudulent, false, deceptive or misleading advertising (Sections 471.033(1)(f), F.S. and subsection 61G15-19.001(2), F.A.C.)	Reprimand to one (1) year probation and \$5,000 fine	One (1) year probation and \$5,000 fine to Revocation
(g) Fraud, deceit, negligence, incompetence or misconduct (Sections 471.033(1)(g) and 455.227(1)(a), (m), F.S.)		
1. Fraud or deceit	Reprimand, two (2) years probation and \$1,000 fine, to one (1) year suspension and \$5,000 fine	One (1) year suspension and \$5,000 fine to Revocation
2.a. Negligence (subsection 61G15-19.001(4), F.A.C.)	Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine, five (5) year suspension and ten (10) years probation	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
b. Negligence in procedural requirements (subsections 61G15-30.003(2),(3) and (5), F.A.C.; Rules 61G15-30.005 and 61G15-30.006, F.A.C.)	Reprimand to two (2) years probation and \$1,000 fine	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
c. As a special inspector	Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
3. Incompetence (subsection 61G15-19.001(5), F.A.C.)	Two (2) year probation to Suspension until ability to practice proved followed by two (2) year probation	Suspension until ability to practice proved followed by two (2) year probation, to Revocation
4. Misconduct (subsection 61G15-19.001(6), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension	One (1) year suspension to Revocation and \$5,000 fine.
a. Expressing an opinion publicly on an engineering subject without being informed as to the facts and being competent to form a sound opinion (paragraph 61G15-19.001(6)(a), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension	One (1) year suspension to Revocation and \$5,000 fine
b. Being untruthful, deceptive or misleading in any	Reprimand and \$1,000 fine to	One (1) year suspension to

professional report, statement or testimony or omitting relevant and pertinent information from such report, statement or testimony when the result or such omission would or reasonably could lead to a fallacious conclusion (paragraph 61G15-19.001(6)(b), F.A.C.)	one (1) year suspension	Revocation and \$5,000 fine
c. Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment other than the payment of the usual commission for securing salaried positions through licensed employment agencies (paragraph 61G15-19.001(6)(e), F.A.C.)	Reprimand, \$5,000 fine per count and suspension for five (5) years, to Revocation	Five (5) years suspension to Revocation
d. Soliciting or accepting gratuities without client knowledge (paragraphs 61G15-19.001(6)(g), (h), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
e. Failure to preserve client's confidence (paragraph 61G15-19.001(6)(r), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation (if pecuniary benefit accrues to engineer)	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
f. Professional judgment overruled by unqualified person (paragraph 61G15-19.001(6)(i), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation

g. Use of name/firm in fraudulent venture (paragraph 61G15-19.001(6)(k), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
h. Undisclosed conflict of interest (paragraphs 61G15-19.001(6)(f), (p), F.A.C.)	Reprimand, \$1,000 fine and two (2) years probation, to Revocation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
<u>i. Renewing or reactivating a license without completion of continuing education hours</u> (paragraph 61G15-19.001(6)(s), F.A.C.)	<u>One (1) year suspension and \$1,000 fine to Revocation</u>	<u>Revocation and \$5,000 fine</u>
(h) Violating any provision of Chapter 455, F.S. (Sections 471.033(1)(h) and 455.227(1)(q), F.S.)	Depending on the severity of the violation, Reprimand and \$1,000 fine per count, to \$5,000 fine and revocation	Depending on the severity of the violation, One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
(i) Practicing on a revoked, suspended, inactive or delinquent license (Sections 471.033(1)(i) and 471.031(1)(e), F.S.)		
1. Delinquent license	Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice	
2. Inactive license	Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice	
3. Suspended license	Revocation and \$1,000 fine	

4. Revoked license	Referral to State Attorney	Referral to State Attorney
(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any documents that were not prepared by him or her or under his or her responsible supervision, direction or control (Section 471.033(1)(j), F.S. and paragraphs 61G15-19.001(6)(j), (q), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
(k) Violating any order of the board or department (Sections 471.033(1)(k), 455.227(1)(q), F.S. and paragraph 61G15-19.001(6)(o), F.A.C.)	Depending on the severity of the violation, from Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine	Depending on the severity of the violation, Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine
(l) Aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Section 455.227(1)(j), F.S.)	\$1,000 fine and probation for one (1) year, to \$5,000 fine and suspension	Reprimand and \$5,000 fine to Revocation
(m) Failing to report in writing a conviction or plea of nolo contendere, a crime in any jurisdiction (Section 455.227(1)(t), F.S.)	Reprimand to \$5,000 fine	Six (6) month suspension to \$5,000 fine and Revocation

(3) The board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the board prior to the imposition of a final penalty. The fact that a Hearing Officer of the Division of Administrative Hearings may or may not have been aware of the below mentioned aggravating or mitigating circumstances prior to a recommendation of penalty in a Recommended Order shall not obviate the duty of the board to consider aggravating and mitigating circumstances brought to its attention prior to the issuance of a Final Order.

(a) Aggravating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the enhancement of a penalty beyond the maximum level of discipline in the guidelines shall include but not be limited to the following:

1. History of previous violations of the practice act and the rules promulgated thereto.
2. In the case of negligence; of the magnitude and scope of the project and the damage inflicted upon the general public by the licensee's misfeasance.

3. Evidence of violation of professional practice acts in other jurisdictions wherein the licensee has been disciplined by the appropriate regulatory authority.

4. Violation of the provision of the practice act wherein a letter of guidance as provided in Section 455.225(3), F.S., has previously been issued to the licensee.

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

1. In cases of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the licensee's misfeasance.
2. Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices his profession.
3. Restitution of any damages suffered by the licensee's client.
4. The licensee's professional standing among his peers including continuing education.
5. Steps taken by the licensee or his firm to insure the non-occurrence of similar violations in the future.

Rulemaking Authority 455.227, 471.008, 471.031, 471.033 FS. Law Implemented 455.227, 471.031, 471.033 FS. History—New 1-7-87, Formerly 21H-19.004, Amended 11-27-94, 5-22-01, 11-15-01, 5-20-02, 11-21-06, 2-21-10.

Discussion followed.

Upon motion by Mr. Bracken, seconded by Mr. Hahn, the proposed amendment to Rule 61G15-19.001 and 61G15-19.004 was adopted as amended:

61G15-19.001 Grounds for Disciplinary Proceedings.

(1) Pursuant to Section 471.033(2), F.S., the Board, to the extent not otherwise set forth in Florida Statutes, hereby specifies that the following acts or omissions are grounds for disciplinary proceedings pursuant to Section 471.033(1), F.S.

(2) A professional engineer shall not advertise in a false, fraudulent, deceptive or misleading manner. As used in Section 471.033(1)(f), F.S., the term "advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content" shall include without limitation a false, fraudulent, misleading, or deceptive statement or claim which:

- (a) Contains a material misrepresentation of facts;
- (b) Omits to state any material fact necessary to make the statement in the light of all circumstances not misleading;
- (c) Is intended or is likely to create an unjustified expectation;
- (d) States or implies that an engineer is a certified specialist in any area outside of his field of expertise;
- (e) Contains a representation or implication that is likely to cause an ordinary prudent person to misunderstand or

be deceived or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;

(f) Falsifies or misrepresents the extent of his education, training or experience to any person or to the public at large, tending to establish or imply qualification for selection for engineering employment, advancement, or professional engagement. A professional engineer shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments;

(g) In any brochure or other presentation made to any person or to the public at large, incident to the solicitation of an engineering employment, misrepresents pertinent facts concerning a professional engineer's employer, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his works.

(3) A professional engineer, corporation or partnership shall not practice engineering under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility or status of those practicing thereunder or is otherwise false, fraudulent, misleading or deceptive within the meaning of subsection 61G15-19.001(2), F.A.C. When an individual is practicing engineering as a sole proprietor under a combination of his own given name, and terms such as "engineering," "and associates" or "and company," then said person is practicing engineering under a fictitious name, and must obtain a certificate of authorization pursuant to Section 471.023(2), F.S. The name of a corporation or partnership, if otherwise authorized, may include the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession. An engineering firm may not offer services to the public under a firm name which contains only the name of an individual not licensed as a professional engineer, registered architect, land surveyor, landscape architect, or professional geologist, in any state.

(4) A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

(5) A professional engineer shall not be incompetent to practice engineering. Incompetence in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall mean the physical or mental incapacity or inability of a professional engineer to perform the duties normally required of the professional engineer.

(6) A professional engineer shall not commit misconduct in the practice of engineering. Misconduct in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall include, but not be limited to:

(a) Expressing an opinion publicly on an engineering subject without being informed as to the facts relating thereto and being competent to form a sound opinion thereupon;

(b) Being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether or not under oath or omitting relevant and pertinent information from such report, statement or testimony when the result of such omission would or reasonably could lead to a fallacious conclusion on the part of the client, employer or the general public;

(c) Performing an engineering assignment when not qualified by training or experience in the practice area

involved;

1. All professional engineer asbestos consultants are subject to the provisions of Sections 455.301-.309, F.S., Chapter 471, F.S., and Rule 61G15-19, F.A.C., and shall be disciplined as provided therein.

2. The approval of any professional engineer as a "special inspector" under the provisions of Chapter 553, F.S., does not constitute acceptance by the Board that any such professional engineer is in fact qualified by training or experience to perform the duties of a "special inspector" by virtue of training or experience. Any such professional engineer must still be qualified by training or experience to perform such duties and failure to be so qualified could result in discipline under this chapter or Chapter 471, F.S.;

(d) Affixing a signature or seal to any engineering plan of document in a subject matter over which a professional engineer lacks competence because of inadequate training or experience;

(e) Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment with the exception of the payment of the usual commission for securing salaried positions through licensed employment agencies;

(f) Becoming involved in a conflict of interest with an employer or client, without the knowledge and approval of the client or employer, but if unavoidable a professional engineer shall immediately take the following actions:

1. Disclose in writing to his employer or client the full circumstances as to a possible conflict of interest; and

2. Assure in writing that the conflict will in no manner influence the professional engineer's judgment or the quality of his services to his employer or client; and

3. Promptly inform his client or employer in writing of any business association, interest or circumstances which may be influencing his judgment or the quality of his services to his client or employer;

(g) Soliciting or accepting financial or other valuable considerations from material or equipment suppliers for specifying their products without the written consent to the engineer's employer or client;

(h) Soliciting or accepting gratuities directly or indirectly from contractors, their agents or other parties dealing with the professional engineer's client or employer in connection with work for which the professional engineer is responsible without the written consent of the engineer's employer or client;

(i) Use by a professional engineer of his engineering expertise and/or his professional engineering status to commit a felony;

(j) Affixing his seal and/or signature to plans, specifications, drawings, or other documents required to be sealed pursuant to Section 471.025(1), F.S., when such document has not been personally prepared by the engineer or prepared under his responsible supervision, direction and control;

(k) A professional engineer shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices of a fraudulent or dishonest nature;

(l) If his engineering judgment is overruled by an unqualified lay authority with the results that the public health and safety is threatened, failure by a professional engineer to inform his employer, responsible supervision and the responsible public authority of the possible circumstances;

(m) If a professional engineer has knowledge or reason to believe that any person or firm is guilty of violating any of the provisions of Chapter 471, F.S., or any of these rules of professional conduct, failure to immediately present

this information to FEMC;

(n) Violation of any law of the State of Florida directly regulating the practice of engineering;

(o) Failure on the part of any professional engineer or certificate holder to obey the terms of a final order imposing discipline upon said professional engineer or certificate holder;

(p) Making any statement, criticism or argument on engineering matters which is inspired or paid for by interested parties, unless the professional engineer specifically identifies the interested parties on whose behalf he is speaking, and reveals any interest he or the interested parties have in such matters;

(q) Sealing and signing all documents for an entire engineering project, unless each design segment is signed and sealed by the professional engineer in responsible charge of the preparation of that design segment;

(r) Revealing facts, data or information obtained in a professional capacity without the prior consent of the professional engineer's client or employer except as authorized or required by law.

(s) Renewing or reactivating a license without completion of required Continuing Education (CE) hours and subject areas as required by section 471.017 F.S. and Rule 61G15-22.001 F.A.C.

(7) A professional engineer who performs building code inspector or plans examiner duties in accordance with Section 471.045, F.S., or Sections 468.603(6), (7), F.S., shall be subject to disciplinary action for commission of the following:

(a) Violating or failing to comply with any provision of Chapter 471, F.S., or the rules of the Board of Professional Engineers;

(b) Having been convicted of a crime in any jurisdiction which directly relates to the practice of building code inspection or plans examination;

(c) Making or filing a false report or record, inducing another to file a false report or record, failing to file a report or record required by state or local law, impeding or obstructing such filing, or inducing another person to impede or obstruct such filing.

(8) A professional engineer shall not be negligent in the practice of engineering while performing duties as a special inspector. Negligence is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering and special inspection principles. Failure to comply with the procedures set forth in the Responsibility Rules for Professional Engineers Providing Threshold Building Inspection, as adopted by the Board of Professional Engineers, shall be considered non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the engineer.

Specific Authority 471.033(2) FS. Law Implemented 471.025(1), 471.033(1)(f), (g), (2) FS. History—New 1-8-80, Amended 6-23-80, 3-23-81, 6-4-85, Formerly 21H-19.01, Amended 5-14-86, 4-23-87, 11-8-88, 1-11-89, 7-3-90, 11-9-92, Formerly 21H-19.001, Amended 11-27-94, 5-20-02.

61G15-19.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners (including holders of certificate of authorization) guilty of violating Chapter 471, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of particular provisions of Chapter 471, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple counts of violations of the same provision of Chapter 471, F.S., or the rules promulgated thereto, or other unrelated violations contained in the same administrative complaint will be grounds for enhancement of penalties. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand which may be included in the final penalty at the Board’s discretion. All impositions of probation as a penalty shall include successful completion of the Engineering Law and Rules Study Guide, completion of a Board-approved course in Engineering Professionalism and Ethics, and an appearance before the Board at the option of the Board at the end of the probationary period. Other terms may be imposed by the Board at its discretion.

(2) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

VIOLATION	PENALTY RANGE	
	FIRST VIOLATION	SECOND AND SUBSEQUENT VIOLATIONS
(a) Violating any provision of Section 455.227(1), 471.025 or 471.031, F.S., or any other provision of Chapter 471, F.S., or rule of the Board or Department (Sections 471.033(1)(a) and 455.227(1)(b), (q), F.S.)	Reprimand and \$1,000 fine, to One (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
1. Failure to sign, seal or date documents (Section 471.025(1), F.S.)	Reprimand to one (1) year probation	Reprimand and one (1) year probation to Revocation
2. Sealing any document after license has expired or been revoked or suspended, or failure to surrender seal if the license has been revoked or suspended (Section 471.025(2), F.S.)	Suspended license: Revocation and \$1,000 fine Revoked license: Referral to State’s Attorney’s office	Suspended license: Revocation and \$5,000 fine Revoked license: Referral to State’s Attorney’s office
3. Signing or sealing any document that depicts work the licensee is not licensed to perform or which is beyond his or her profession or specialty therein or practicing or offering to practice beyond the scope permitted by law or accepting and performing responsibilities the licensee is not competent to perform (Sections 471.025(3), 455.227(1)(o), F.S., paragraphs 61G15-19.001(6)(c), (d), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine; to \$5,000 fine, one (1) year suspension and two (2) years probation	Reprimand, \$5,000 fine, one (1) year suspension and two (2) years probation to Revocation

4. Firm practicing without certificate of authorization (Section 471.023, F.S. and subsection 61G15-19.001(3), F.A.C.)	Reprimand, \$1,000 fine to one (1) year suspension and \$5,000 fine	Reprimand, one (1) year suspension and \$5,000 fine to Revocation
5. Failure to complete continuing education (Section 471.017(3), F.S. and Rule 61G15-22.001, F.A.C.)	Reprimand and \$1,000 fine, to Suspension until licensee demonstrates compliance	Suspension until licensee demonstrates compliance to Revocation
<u>5. 6.</u> Practicing engineering without a license or using a name or title tending to indicate that such person holds an active license as an engineer (Sections 471.031(1)(a), (b), F.S.)	\$1,000 fine to \$5,000 fine	\$5,000 fine to \$10,000 fine to referral to State Attorney's Office
6.7. Presenting as his or her own the license of another (Section 471.031(1)(c), F.S.)	\$1,000 fine to \$5,000 fine	\$5,000 fine to \$10,000 fine and referral to State Attorney's Office
7. 8. Giving false or forged evidence to the Board or concealing information relative to violations of this chapter (Sections 471.031(1)(d), (g), F.S.)	\$1,000 fine to \$5,000 fine and suspension	Reprimand and \$5,000 fine to Revocation
8. 9. Employing unlicensed persons to practice engineering or aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Sections 471.031(1)(f) and 455.227(1)(j), F.S.)	\$1,000 fine and reprimand; to \$5,000 and suspension	Reprimand and \$5,000 fine to Revocation
9. 10. Having been found liable for knowingly filing a false complaint against another licensee (Section 455.227(1)(g), F.S.)	\$1,000 fine and reprimand; to \$5,000 per count and suspension	Reprimand and \$5,000 fine to Revocation
<u>10. 11.</u> Failing to report a person in violation of Chapter 455, Chapter 471, F.S., or the rules of the Board or the Department (Section 455.227(1)(i), F.S.)	Reprimand to \$5,000 and suspension for one (1) year	Reprimand and \$5,000 fine to Revocation
<u>11. 12.</u> Failing to perform any statutory or legal obligation (Section 455.227(1)(k), F.S.)	Depending on the severity of the offense, from a Reprimand to Revocation	Depending on the severity of the offense, from a Reprimand to Revocation

12. <u>13.</u> Exercising influence on a client for financial gain (Section 455.227(1)(n), F.S.)	Reprimand to one (1) year suspension and \$5,000 fine	Reprimand and \$5,000 fine to Revocation
13. <u>14.</u> Improper delegation of professional responsibilities (Section 455.227(1)(p), F.S.)	\$1,000 fine and probation for one (1) year, to suspension	Reprimand and \$5,000 fine to Revocation
14. <u>15.</u> Improperly interfering with an investigation or inspection or disciplinary proceeding (Section 455.227(1)(r), F.S.)	\$1,000 fine and probation for one (1) year; to suspension	Reprimand and \$5,000 fine to Revocation
(b) Attempting to procure a license by bribery, fraudulent misrepresentation, or error of the Board or Department (Sections 471.033(1)(b) and 455.227(1)(h), F.S.)	One (1) year suspension and \$1,000 fine, to Revocation if licensed; if not licensed, denial of license and referral to State Attorney	Revocation and \$5,000 fine if licensed; if not licensed, denial of license and referral to State Attorney
(c) Having a license to practice engineering acted against or denied by another jurisdiction (Sections 471.033(1)(c) and 455.227(1)(f), F.S.)	Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes	Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes
(d)1. Being convicted or found guilty of, or entering a plea of nolo contendere to a crime which relates to the practice or ability to practice (Sections 471.033(1)(d) and 455.227(1)(c), F.S.)	Depending on the severity of the crime, from Reprimand \$1,000 fine, and one (1) year probation, to Revocation	Depending on the severity of the crime, from one (1) year suspension with 2 years probation to Revocation
2. Conviction of crime related to building code inspection or plans examination (paragraph 61G15-19.001(7)(a), F.A.C.)	Reprimand \$1,000 fine, and one (1) year probation	One (1) year suspension with 2 years probation to Revocation
(e) Knowingly making or filing a false report or record, failing to file a report or record required by law, impeding or obstructing such filing (Sections 471.033(1)(e), 455.227(1)(l), F.S. and paragraph 61G15-19.001(7)(c), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension, two (2) years probation	One (1) year suspension, 2 years probation, and \$1,000 fine, to Revocation and \$5,000 fine

(f) Fraudulent, false, deceptive or misleading advertising (Sections 471.033(1)(f), F.S. and subsection 61G15-19.001(2), F.A.C.)	Reprimand to one (1) year probation and \$5,000 fine	One (1) year probation and \$5,000 fine to Revocation
(g) Fraud, deceit, negligence, incompetence or misconduct (Sections 471.033(1)(g) and 455.227(1)(a), (m), F.S.)		
1. Fraud or deceit	Reprimand, two (2) years probation and \$1,000 fine, to one (1) year suspension and \$5,000 fine	One (1) year suspension and \$5,000 fine to Revocation
2.a. Negligence (subsection 61G15-19.001(4), F.A.C.)	Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine, five (5) year suspension and ten (10) years probation	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
b. Negligence in procedural requirements (subsections 61G15-30.003(2),(3) and (5), F.A.C.; Rules 61G15-30.005 and 61G15-30.006, F.A.C.)	Reprimand to two (2) years probation and \$1,000 fine	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
c. As a special inspector	Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
3. Incompetence (subsection 61G15-19.001(5), F.A.C.)	Two (2) year probation to Suspension until ability to practice proved followed by two (2) year probation	Suspension until ability to practice proved followed by two (2) year probation, to Revocation
4. Misconduct (subsection 61G15-19.001(6), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension	One (1) year suspension to Revocation and \$5,000 fine.
a. Expressing an opinion publicly on an engineering subject without being informed as to the facts and being competent to form a sound opinion (paragraph 61G15-19.001(6)(a), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension	One (1) year suspension to Revocation and \$5,000 fine
b. Being untruthful, deceptive or misleading in any professional report, statement or testimony or omitting relevant and pertinent information from such report, statement or testimony when the result or such omission would or reasonably could lead to a fallacious conclusion	Reprimand and \$1,000 fine to one (1) year suspension	One (1) year suspension to Revocation and \$5,000 fine

(paragraph 61G15-19.001(6)(b), F.A.C.)		
c. Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment other than the payment of the usual commission for securing salaried positions through licensed employment agencies (paragraph 61G15-19.001(6)(e), F.A.C.)	Reprimand, \$5,000 fine per count and suspension for five (5) years, to Revocation	Five (5) years suspension to Revocation
d. Soliciting or accepting gratuities without client knowledge (paragraphs 61G15-19.001(6)(g), (h), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
e. Failure to preserve client's confidence (paragraph 61G15-19.001(6)(r), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation (if pecuniary benefit accrues to engineer)	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
f. Professional judgment overruled by unqualified person (paragraph 61G15-19.001(6)(i), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
g. Use of name/firm in fraudulent venture (paragraph 61G15-19.001(6)(k), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
h. Undisclosed conflict of interest (paragraphs 61G15-19.001(6)(f), (p), F.A.C.)	Reprimand, \$1,000 fine and two (2) years probation, to Revocation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
i. Renewing or reactivating a license without completion of continuing education hours (paragraph 61G15-19.001(6)(s), F.A.C.)	Reprimand and \$1,000 fine, to Suspension until licensee demonstrates compliance	One (1) year suspension and \$1,000 fine to Revocation
(h) Violating any provision of Chapter 455, F.S.	Depending on the severity of the violation, Reprimand and	Depending on the severity of the violation, One (1) year

(Sections 471.033(1)(h) and 455.227(1)(q), F.S.)	\$1,000 fine per count, to \$5,000 fine and revocation	suspension, two (2) years probation and \$5,000 fine to Revocation
(i) Practicing on a revoked, suspended, inactive or delinquent license (Sections 471.033(1)(i) and 471.031(1)(e), F.S.)		
1. Delinquent license	Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice	
2. Inactive license	Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice	
3. Suspended license	Revocation and \$1,000 fine	
4. Revoked license	Referral to State Attorney	Referral to State Attorney
(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any documents that were not prepared by him or her or under his or her responsible supervision, direction or control (Section 471.033(1)(j), F.S. and paragraphs 61G15-19.001(6)(j), (q), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
(k) Violating any order of the board or department (Sections 471.033(1)(k), 455.227(1)(q), F.S. and paragraph 61G15-19.001(6)(o), F.A.C.)	Depending on the severity of the violation, from Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine	Depending on the severity of the violation, Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine

(l) Aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Section 455.227(1)(j), F.S.)	\$1,000 fine and probation for one (1) year, to \$5,000 fine and suspension	Reprimand and \$5,000 fine to Revocation
(m) Failing to report in writing a conviction or plea of nolo contendere, a crime in any jurisdiction (Section 455.227(1)(t), F.S.)	Reprimand to \$5,000 fine	Six (6) month suspension to \$5,000 fine and Revocation

(3) The board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the board prior to the imposition of a final penalty. The fact that a Hearing Officer of the Division of Administrative Hearings may or may not have been aware of the below mentioned aggravating or mitigating circumstances prior to a recommendation of penalty in a Recommended Order shall not obviate the duty of the board to consider aggravating and mitigating circumstances brought to its attention prior to the issuance of a Final Order.

(a) Aggravating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the enhancement of a penalty beyond the maximum level of discipline in the guidelines shall include but not be limited to the following:

1. History of previous violations of the practice act and the rules promulgated thereto.
2. In the case of negligence; of the magnitude and scope of the project and the damage inflicted upon the general public by the licensee's misfeasance.
3. Evidence of violation of professional practice acts in other jurisdictions wherein the licensee has been disciplined by the appropriate regulatory authority.
4. Violation of the provision of the practice act wherein a letter of guidance as provided in Section 455.225(3), F.S., has previously been issued to the licensee.

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

5. In cases of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the licensee's misfeasance.
6. Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices his profession.
7. Restitution of any damages suffered by the licensee's client.
8. The licensee's professional standing among his peers including continuing education.
6. Steps taken by the licensee or his firm to insure the non-occurrence of similar violations in the future.

Rulemaking Authority 455.227, 471.008, 471.031, 471.033 FS. Law Implemented 455.227, 471.031, 471.033 FS. History—New 1-7-87, Formerly 21H-19.004, Amended 11-27-94, 5-22-01, 11-15-01, 5-20-02, 11-21-06, 2-21-10.

The motion passed.

Mr. Rimes discussed an ongoing issue that the legal department has concerns about. He stated that it has to do with engineers who are also involved with an inspection company and/or a design company.

Discussion followed.

Mr. Harris will work with Mr. Rimes and Ms. Raybon on proposed language, which will be presented at an upcoming board meeting.

6. Review/Open **Rule 61G15-20.0010 – Application for Licensure by Examination** – (Revise FE Application—combine Applications 003 & 004)

Mr. Bracken discussed the changes to the application.

Ms. Sammons stated the application needs to be revised to reflect that the FE Exam is offered year around.

Upon motion by Mr. Hahn, seconded by Ms. Ferguson, the application was approved with the provision that anywhere in the application that has wording about the FE Exam schedule be revised to state that the exam is now offered on a year round basis. The motion passed.

7. Review/Open **Rule 61G15-20.002 – Experience** (make it clear that the 4 years of experience has to be earned after the engineering degree; not a engineering technology degree)

Mr. Harris discussed the proposed rule amendment to 61G15-20.002:

61G15-20.002 Experience.

(1)(a) In order to meet the prerequisites for entry into the engineering examination, an applicant is required to have four years of acceptable experience in engineering at the time of application and four years of acceptable educational qualifications. In determining whether an applicant's experience background is sufficient to meet the requirements set forth in Sections 471.013(1)(a)1. and 2., F.S., the Board has determined that an individual must have the requisite number of years of acceptable engineering experience gained through education and through the requisite amount of full-time employment in engineering. The type of employment which shall be acceptable must principally involve activities in the field of engineering as defined in Section 471.005(7), F.S. The Board may accept engineering experience in foreign countries if such experience is properly verified by the Board from evidence supplied by the applicant to be equivalent to that accepted as experience by the Board as to any state or territory.

(b) Because the evaluation of experience is a complex and subjective matter, the Board establishes the following guidelines which shall be generally applicable absent extraordinary evidence and documentation supporting a

departure therefrom:

1. The acquisition of acceptable engineering experience should logically follow and constitute an application of the engineering education previously obtained.

2. Engineering experience obtained prior to the completion of the engineering degree from a board approved engineering program is usually of a subprofessional nature. If the full-time pregraduation experience is obtained within 2 years of completing the engineering degree from a board approved engineering program, and involves tasks and responsibilities consistent with the disciplines of engineering, experience credit may be awarded at 50% of actual time. In any event, the total engineering experience credit allowable for pregraduation experience shall not exceed 12 months.

3. Experience credit is based on a 40 hour per week full-time basis. No additional credit is allowable for overtime work, or for part-time work experience obtained while pursuing engineering education on a full-time basis, or for the pursuit of a master's or doctoral degree while obtaining full-time work experience.

4. Experience must be progressive on engineering projects to indicate that it is of increasing quality and requiring greater responsibility.

5. Experience must not be obtained in violation of the licensure act.

6. Experience gained in the armed services, to be creditable, must be of a character equivalent to that which would have been gained in the civilian sector doing similar work. Normally, it would be expected that the applicant while in the armed services served in an engineering or engineering-related group.

7. Experience should be gained under the supervision of a licensed professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable.

8. For sales experience to be creditable, it must be demonstrated that engineering principles were required and used in gaining the experience.

9. Teaching experience, to be creditable, must be in engineering or engineering-related courses at an advanced level in a college or university offering an engineering program of four years or more that is approved by the Board.

10. Experience gained in engineering research and design projects by members of an engineering faculty where the program is approved by the Board is creditable.

11. Experience may not be anticipated. The experience must have been gained by the time of the application.

12. Experience in construction, to be creditable, must demonstrate the application of engineering principles.

13. Experience should include demonstration of a knowledge of engineering mathematics, physical and applied science, properties of materials, and the fundamental principles of engineering design.

14. Experience should include demonstration of the application of engineering principles in the practical solution of engineering problems.

(2) In order to verify an applicant's experience record, the Board will require evidence of employment from employers or supervisors who are employed in the engineering profession or are professional engineers, who shall set forth the quality and character of the applicant's duties and responsibilities. In addition to the employer verification, an applicant must list three personal references who are professional engineers. Should the Board find the information submitted by the applicant is insufficient or incomplete, the Board may require the applicant to

supply additional references or evidence regarding the applicant's experience and background or both so that an intelligent decision may be made on whether admittance to the examination is allowable.

The Board will accept as equivalent to one year's experience a master's degree in engineering from an EAC/M-ABET-accredited program or from a college or university in the U.S. that has an EAC/ABET-accredited engineering program in a related discipline at the baccalaureate level. The Board will also accept as equivalent to one year's experience a doctorate in engineering from a college or university in the U.S. that has an EAC/ABET-accredited engineering program in a related discipline at the baccalaureate level. Experience equivalents will be given for the master's or doctoral degree only if the applicant has earned a prior engineering degree from a college or university that solely meets the requirements of a Board-approved engineering program as defined in subsection 61G15-20.001(2), F.A.C. Experience equivalents shall not be given for a master's or doctoral degree if credits earned for the degree are used to satisfy educational requirements of Rule 61G15-20.007, F.A.C. The combination of experience equivalents and work experience shall not exceed the number of actual months during which the experience is claimed.

Rulemaking Authority 471.008, 471.013(1)(a) FS. Law Implemented 471.005(6), 471.013(1)(a) FS. History—New 1-8-80, Amended 3-11-80, 6-23-80, 7-7-83, 9-13-84, Formerly 21H-20.01, Amended 8-18-87, 12-4-91, Formerly 21H-20.002, Amended 12-26-94, 5-20-02, 4-5-04, 11-2-15.

Discussion followed.

The committee asked Mr. Harris to bring revised language to the February board meeting.

8. Review/Open **Rule 61G15-23 – Seals** (Issue from Dec. 2015 FBPE Board Meeting and issue with the current requirement for the Florida DOT PEDS system)

Mr. Bracken discussed reorganization of Rule 61G15-23 and several issues associated with s. 23.005.

Discussion followed on electronic seals and digital seals and how to discipline licensees who do not follow the rule.

Mr. Bracken stated that he would develop some procedures for this rule and possibly bring it to the February board meeting or possibly have a special Rules Committee to deal with this.

Mr. Fleming stated that he would work on a response to the letter from Mr. Hilpert about signing and sealing.

9. Review/Open **Rule 61G15-24.001 – Schedule of Fees** – (add fee for CE Providers and CE Courses)

Mr. Harris reviewed the proposed rule amendment to Rule 61G15-24.001:

61G15-24.001 Schedule of Fees.

(1) Pursuant to Section 471.011, F.S., the Board hereby establishes the following fees for applications, licensing and renewal, temporary registration, late renewal, licensure by endorsement, reactivation fee, and replacement of certificate.

(2) Engineering licensure fees (individuals and firms):

(a) Application fee for licensure by examination or endorsement – \$125.00 non-refundable.

(b) Initial license fee – \$100.00.

(c) Biennial renewal fee – \$125.00.

(d) Delinquency fee – \$100.00.

(e) Temporary license (individual) – \$25.00.

(f) Temporary Certificate of Authorization (firm) – \$50.00.

(g) Application fee for a Certificate of Authorization (firm) – \$125.00 non-refundable.

(h) Initial fee for Certificate of Authorization – \$125.00.

(i) Biennial Renewal fee for Certificate of Authorization (firm) – \$125.00.

(j) Inactive Status fee – \$125.00.

(k) Reactivation fee – \$150.00.

(l) Duplicate Certificate – \$25.00.

(m) Special Inspector Certification fee – \$100.00.

(n) Application fee for Special Inspector Certification – \$125.00.

(o) Engineer Intern Endorsement fee – \$100.00.

(3) Engineer Intern application fee – \$30.00.

(4) Continuing Education provider fees

(a) Application fee for continuing education provider status - \$250.00.

(b) Application fee for Laws and Rules continuing education course (per course)- \$50.

(c) Application fee for Professional Ethics continuing education course (per course) - \$50.

Rulemaking Authority 455.213, 455.2179(3), 455.219, 455.271, 471.008, 471.011, FS. Law Implemented 455.217(3), (7), 471.011, 471.015, 471.021 FS. History–New 1-8-80, Amended 8-26-81, 12-19-82, 6-2-83, 2-28-84, Formerly 21H-24.01, Amended 3-10-86, 12-11-86, 3-10-87, 4-12-88, 12-21-88, 1-10-90, 8-15-90, 1-6-93, Formerly 21H-24.001, Amended 11-15-94, 8-10-98, 6-16-99, 5-8-00, 11-15-01, 2-21-02, 9-16-02, 5-9-04, 6-5-05, 3-5-06, 7-17-14, .

Upon motion by Mr. Hahn, seconded by Mr. Fleming, the proposed rule amendment to Rule 61G15-24.001 was approved as amended by adding “per course” in items 4(b) and 4(c). The motion passed.

10. Review/Open Rule 61G15-35.004 – Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors

Mr. Bracken stated that this is a housekeeping item and gave a brief background on the rule. Mr. Bracken stated that we need to update Rule 61G15-35.003 so that the rule follows the same guidelines as 61G15-35.004.

Discussion followed on this.

The committee asked that Mr. Harris to bring proposed language to the February board meeting.

11. Old Business

12. New Business

Mr. Bracken stated that the Experience Committee is still having an issue with the term Practicing Engineer.

Discussion followed.

Mr. Bracken mentioned that maybe we can add something to the experience rule dealing with this and asked that Mr. Harris to bring proposed language to the February board meeting.

Mr. Bracken discussed the threshold inspection qualifications and that the FBC rendered a formal interpretation several years ago that said “once a threshold building, always a threshold building” and the impact that is having on our licensees.

13. Adjourn

a. Date, Time and Location of Next Rules Committee Meeting

March 9, 2016 at 8:30 a.m.
FBPE Office
2639 North Monroe Street
Suite B-112
Tallahassee, FL 32303

