

MINUTES OF THE JUNE 14, 2011 CONSTRUCTION CONTRACTORS BOARD MEETING

The Construction Contractors Board (CCB) met on Tuesday, June 14, 2011, in the Santiam Room, West Salem Roth's IGA, 1130 Wallace Rd. NW, Salem, Oregon.

Attendees:

Board Members: Chair, Rob Hernandez, Chuck Crump, Richard De Wolf, Jon Mangis, Kathryn Merritt, Roger Nyquist, Tom Skaar, Sandy Trainor and Rob Yorke. Note: Board member Nyquist who had been excused from the morning session, arrived at 9:07 a.m. right after the minutes were approved.

Staff: CCB Administrator Craig P. Smith, Enforcement Manager Richard Blank, Dispute Resolution Manager, Bill Boyd, Education Manager Gina Fox, Budget, Board Secretary Catherine Dixon, and Education Assistant Holly Eilertson. Assistant Attorney General Katherine Lozano was also present.

Guests: Bonnie Sullivan, Phil Peach, Shawn Dunigan, Greg Miller, Dan and Sue Hines, and Gary Cook.

A. PROCEDURAL

1. Call to Order:

Chair Rob Hernandez called the meeting to order at 9:00 a.m.

2. Approval of Agenda and Order of Business:

The agenda for the June 14, 2011, meeting was amended to move item E.7 (Board 2011 Calendar) to A.7 and the agenda was approved.

3. Approval of Minutes, April 26, 2011, Board Meeting & Appeal Committee:

The April 26, 2011, Board meeting minutes and the Appeal Committee minutes was approved.

MOTION: Tom Skaar moved to approve the April 26, 2011, Board meeting and Appeal Committee minutes.

VOTE: 8-0, Ayes— Crump, De Wolfe, Hernandez, Mangis, Merritt, Skaar, Trainor, and Yorke.

4. Board Member Reports:

Board members reported on current CCB related events in the geographic region, in which they live and work. Construction is growing at a slow rate in most regions and members are cautiously optimistic.

5. Introduction of New Board Member:

Administrator Smith introduced new Board member Kathryn Merritt to Board members. Ms. Merritt primarily works on residential remodels and has worked in construction since 1999.

6. Agency Report:**a. Number of New Licenses Processed Per Month:**

Administrator Smith reported that the number of new licenses processed May 2011.

- The agency processed 233 new CCB license during the month of May.
- The average for the period July 2009 through May 2011 was 268.
- The 2009-11 budget is based on an average of 325 new licenses per month.

b. Rate of Renewals:

Administrator Smith reported that the renewal rate for May 2011 was 80.1 percent compared to the 75 percent projection for the 09/11 biennium.

- The agency processed 1,641 renewals during the month of May.
- The average renewal rate for the period July 2009 through May 2011 was 75.5 percent, which is 100 percent of the projection in the budget for 2009/11 LAB.
- The 2009-11 budget is based on 75 percent renewal rate.

c. Workload Charts:

- Administrator Smith discussed the workload charts. The total number of licenses, including both active and inactive in May 2011, is 39,047. The number of licensees continues to decline; down approximately ten percent of what license numbers were 24 months ago.
- Enforcement actions are about the same.
- The amount of Dispute Resolution Services (DRS) complaints is less than expected.

7. Board Calendar 2011:

Board members discussed alternative dates for the August Board Meeting, and the consensus of the Board was to move the next meeting to September 27, 2011. If the need for a special meeting arises, the Board decided to keep the date of August 9, 2011, open for a special ad-hoc telephone conference call meeting, if needed.

B. ONGOING ISSUES:**1. 2011 Legislation:**

Administrator Smith reported that this 76th Legislative Session the Construction Contractors Board (CCB) introduced three bills. The outcome of those bills is as follows:

- SB 153: Allows Construction Contractors Board to adopt rules for determining whether limited inspection of system or component of residential structure or appurtenance constitutes home inspector services. This bill has

been signed by the Governor on 5/19/2011; assigned Chapter No. 79, which becomes effective January 1, 2012.

- **SB 154**: Increases threshold amount of claims for which Construction Contractors Board may adopt rule making contested case proceeding unavailable. This bill died in committee.
- **SB 155**:
 - Modifies definitions of 'residential structure' and 'small commercial structure' for purposes of construction contractor laws.
 - Directs Construction Contractors Board to adopt criteria for allowing exemption of residential contractor from board rules requiring certain types of continuing education or training.
 - Allows board to approve privately and publicly offered programs for continuing education purposes.
 - This bill has been signed by the Governor on June 2, 2011. The bill is awaiting chapter number assignment.

There are two other bills that have passed that amend ORS 701 and those bills are as follows:

- **SB 383**: Residential Defect Claims: Relating to residential defect claims; creating new provisions; and amending ORS 701.565, 701.570 and 701.600. This bill is awaiting the Governor's signature.
- **SB 704B**: Exemptions to CCB license requirements: Relating to construction contractor license exemptions; creating new provisions; amending ORS 701.010; and declaring an emergency. This bill was signed by the Governor on June 2, 2011. The bill is awaiting chapter number assignment.

2. Dispute Resolution Services (DRS) Mediation Only (MO):

Administrator Smith discussed the "DRS Program Transition Plan" on page 168 of the Board packet with Board members. CCB's 2011-13 Budget significantly reduced expenditures by over two million. To compensate for this reduction, the Governor's Recommended Budget (GRB) eliminated the CCB Dispute Resolution Services (DRS) section and two Enforcement Field Investigator positions.

During the Ways and Means Committee hearings, the Legislature worked with the agency to make the necessary budget cuts and keep the mediation portion of DRS services. These changes were passed by both the House and the Senate in HB 5012 and signed by the Governor.

New Services Levels effective on or about July 1, 2011:

The CCB DRS program would continue to help resolve disputes between the contractor and:

- A property owner alleging breach of contract, negligent or improper work.
- An employee alleging nonpayment of wages.

- A supplier alleging nonpayment for materials.
- Another contractor for breach of contract, negligent or improper work, or nonpayment.

After a complaint is filed, the DRS staff will review the complaint to make sure it meets jurisdiction requirements, such as timeliness, in Oregon, type of complaint. Once accepted, a mediator will review conditions and attempt to help the parties reach a compromise settlement of their dispute and put the agreement is put into writing.

If the parties cannot or will not agree to a settlement, or if the contractor fails to make recommended repairs or to satisfy the settlement agreement, the complainant must then move the complaint to the court system, often small claims court.

If the court rules in favor of the complainant and the contractor does not pay the court judgment, the judgment is submitted to the CCB DRS for processing payment through the contractor's bond.

Staff are working with the draft language in SB 939 submitted to the agency to amend OAR 812; however, the bill has not been amended to include the draft statutory changes at this time but staff expect the amendments will be filed soon. The statutory changes to accomplish the reduction in service levels are anticipated to be included in amendments to SB 939 and most likely will become effective July 1, 2011. The current draft version of SB 939 does not allow for attorney fees.

Staff are currently working on revised administrative rules to implement the change to mediation only DRS process. For a period of time CCB will have rules that are parallel. CCB needs to have new rules in place for the change to mediation only, and keep the old rules in place for complaints filed prior to July 1, 2011, which could take up to a year or longer to get through the process. The draft language before you today may need to be revised prior to staff filing temporary rules to implement the DRS mediation only process.

Board members discussed the challenges the agency faces trying to notify consumers and contractors that there will be a change in the DRS process when the agency has no marketing budget.

Staff sent a press release to the Oregon State Bar notifying them of the changes that will be coming soon. Staff are planning on sending press releases to contractor organizations and the press about the changes once we know what the final outcome will be. The plan includes notifying education providers and continuing education providers about the changes so they can pass the information on to their students.

Board members suggested staff consider working with building officials to see if there is a flyer or notice they could give out when permits are issued.

3. Continuing Education:

a. Review and Status of Current CCB RCE Plan:

Education Manager Gina Fox gave an overview of the history of the continuing education program. The Continuing Education Committee worked with stakeholders to get their input on the type of continuing education they felt was necessary. The rules were drafted approximately one and half years ago and some areas need Board member input and review.

Residential contractors must complete 16 hours of continuing education during the two year license period.

- Eight hours must be in mandatory subject areas (Core); and
- Eight hours are discretionary (Electives).

Contractors can choose electives that are construction related, that the contractor determines is important for their business.

Residential Limited Contractor (RCL) Exemption:

Contractors endorsed as a Residential Limited Contractor (RLC) are required to complete the Core hours only. They are not required to complete the elective hours. This was a rule the Board adopted nearly one year ago.

Core Continuing Education Consists of:

- 3 hours in CCB Business Law and Practices
- 3 hours in Building Exterior Shell Training (BEST)
- 2 hours in Building Codes or Green /Sustainable Building Practices

b. Additional CCB RCE CORE Exemptions:

Staff discussed ORS 701.124 with Board members. ORS 701.124 applies to commercially endorsed contractors. The commercially endorsed contractor continuing education requirements are all electives, and there are no courses provided by CCB.

Staff discussed the commercially endorsed continuing education exemptions with Board members. ORS 701.124(7) reads:

(7) This section does not apply to a commercial contractor:

(a) That is subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693; or

(b) As provided by rule by the Construction Contractors Board.

ORS chapter 479 covers electricians; ORS chapter 480 covers boilers and pressure vessels, and ORS chapter 693 covers plumbers.

Board members discussed the history of the residential continuing education requirements.

Staff discussed the amendment that added sections 5 and 6 to SB 155 with Board members. Sections 5 and 6 of SB 155 read:

SECTION 5. (1) *Notwithstanding ORS 701.126, the Construction Contractors Board shall adopt criteria for allowing the exemption of a residential contractor from any board rule requiring continuing education in state building code compliance or requiring building exterior shell training.*

(2) *The board may require a residential contractor to take continuing education or training in other subjects to offset the reduction in continuing education or training hours created by the exemption described in subsection (1) of this section. (emphasis added)*

SECTION 6. (1) *The Construction Contractors Board may approve private and public education and training programs as programs that may be credited toward meeting the continuing education requirements for residential contractors adopted by the board under ORS 701.126. The board may determine the number of hours to be credited to an approved program.*

(2) *Programs approved by the board under this section must be designed to directly contribute to the professional competency of residential contractors.*

Administrator Smith reported that he met with Representative Holvey during the Spring of 2011 to discuss the amendments to SB 155 and he encouraged CCB to create exemptions for some types of construction work.

c. Public Comment:

Greg Miller, NECA, testified “he wants to talk about the residential side the electrical industry as it relates to continuing education. I just wanted to clarify the agreements that were in place, that we understood to be in place when the bill passed in 2007, that the trades would be exempt. It is fair to say that electrical contractors are not opposed to training, they are not opposed to more training, it is just that the training that they do in-house at the apprenticeship and their continuing education to maintain journey level and supervisory level licenses in the electrical field, I believe outpace what is in the BEST and Building Codes training by CCB.”

Shawn Dunigan, electrical contractor, ABC Electric, stated “he is on the Board of Directors for NECA and has been involved with the bill back in 2007. We didn’t realize there was a hole in the statute. I don’t know any electrical contractors that are residential only, virtually all of us are both commercial and residential. Some companies are primarily commercial, but also do some residential work. It was our assumption that since we were exempt under the commercial endorsement that that exemption carried through since we are the same entity and the same people and the same training was required. There are two different license levels for journeyman, both residential and commercial.”

“The residential is 4,000 hours and 800 hours of schooling, and the commercial is 8,000 hours and 1,600 hours of schooling. The continuing education is the same number of hours each license cycle, which is 24 hours; supervisors have more hours required. Part of that is code changes training that changes every three

years. Electrical contractor license cycle is every two years, the code adoption course sometimes repeats, so sometimes we have to take a repeat of the code change course because your license renewal comes in the middle of a code change class and this includes Oregon adopted addendums. BCD has their Oregon Specialty Code where they modified the NEC for our jurisdiction. Most electrical companies have all the employees take the training, except the receptionist and warehousemen.”

Board member Skaar asked about getting CCB’s BEST course approved for part of the 24 hours training.

Greg Miller replied, “we would like to be exempted from that requirement. BCD’s apprenticeship program addresses building penetration. While the BEST course addresses the building, the minor amount of penetration is there or the penetration that an electrician would make on the building, I do believe are covered through the apprenticeship program.”

Shawn Dunigan stated, “in addition to that, electricity and water don’t mix very well. Our penetrations are typically receptacles and lights to entrances to buildings and if we don’t seal those penetrations properly, the actual electrical fixture will fail. We have a lot of code within the NEC and within the Specialty Code that addresses all of those issues of sealing, draining, arrange to drain, it is written into the National Electrical Code. We have elective choices within our 24 hour training requirements; such as residential troubleshooting, residential wiring. We have a whole list of courses that get approved through BCD to get credit hours for electives. In order for the courses to count as continuing education, they have to be reviewed and approved by BCD. We have additional electives for things that do not count, for things that people want to learn. It takes quite a bit to keep up with new technologies and may not give you credit towards your license, but you still need to know it to be an effective electrician.”

Board member Hernandez asked if there is any different between union and non-union training requirements.

Shawn Dunigan replied, “When it comes to licensing issues, the requirements are exactly the same. IEC does provide a good training program partnering with many of the community colleges. To get and maintain a license, the training is fairly equal. Unions try to exceed on things that are not necessarily required by license, new technologies, efficiencies, and things like that.”

Board member Yorke asked what about the low voltage guys, cable guys drilling holes through residences to run TV or data cables; what is their level of competence and education?

Shawn Dunigan replied, “actually it is in between the residential and commercial. Their apprenticeship is 5,000 hours I believe. It is more than residential but less than the commercial and they have the same continuing education requirements.

They are also licensed by BCD. They rarely work on residential projects; typically the residential journeyman will do the low voltage as well. Usually the larger commercial contractors with pretty good sized infrastructure are where you will get specialized low voltage people.”

Board members stated that they meant the Direct TV guy and cable guy.

Shawn Dunigan replied, “I am not sure, because depending on what they do. If they don’t actually do any wiring inside the walls, I don’t know what the licensing and permitting requirements are.”

Katherine Lozano, AAG, stated that she is primary counsel for BCD, there are exemptions from electrical licensure for certain groups and telecom groups is one of them, and so if it is a cable company categorized as a telecom group, they are exempted from electrical licensure.

d. CCB RCE Building Code (BC) CORE Provider Approval:

Administrator Smith reported that when CCB originally wrote the administrative rules for CCB RCE BC Core provider approval, it was thought that BCD would approve all the classes and that is the way CCB set it up. As we have reported to you, BCD has been pushing back a little bit; they have a lot of work and little resources. Staff recently learned that BCD does not want to look at all the CCB classes and approve them. At the last Board meeting there were folks reporting that they are having a hard time getting courses approved. CCB staff met with BCD staff and BCD is willing to work with CCB, but they do not want to approve non-BCD type current courses. BCD has agreed to look that course over and give kind of a stamp of approval saying yes it is a codes course.

Lack of Providers:

Education Manager Gina Fox reported that the first issue is CCB’s lack of providers; we currently have two. Providers that want to be approved can’t get approved because they can’t get their courses approved. We need to find a way for CCB to have a process where CCB approves the courses.

Provider Fees:

Staff believes we need to lower the fee to help encourage providers to apply to the CCB to have their course approved. Currently the fee is \$500 for a provider fee and renewal is \$500 every two years. Staff recommends lowering the fee in order to encourage more providers. At the time the fee was set, CCB did not have any other funding source to help pay for the continuing education. Staff ask that the Board consider lowering the fee.

Contractors Taking Non-Approved Building Code (BC) Courses:

There are many contractors out there that are currently taking ICC or BCD courses that have been approved by BCD, because BCD approves all of the courses for the continuing education and they also approve the one percent

courses for BCD licensees. The one percent tax that is on the permit, they create courses and approve those.

Staff believes that a lot of contractors are taking those courses to comply with CCB requirements for building code, not realizing that they haven't gone through the CCB process so they don't count. We are finding that to be a problem. CCB is looking at changing the approval process. CCB would need to eliminate the rule that requires all CCB BC courses to be approved by BCD.

Staff are working on developing a process to receive the provider applications for BC courses. BCD has agreed to look that course over and give kind of a stamp of approval saying yes it is a codes course.

The third issue is that for a period of time we should recognize all of the BC courses or ICC courses that are out there, so that those contractors that have taken them thinking they qualify would count towards their CCB requirements.

Draft Rules:

Ms. Fox discussed the proposed draft rules with Board members.

Board members expressed concern that extending the time to January 2012 is not long enough of a time and perhaps move that date to July 1, 2012.

Staff suggested having CCB code providers that are approved by CCB and allow CCB to get information provided electronically. One wish is to be able to have the students answer a survey giving a score on the course and perhaps provide that information on CCB's website for potential students to review in order to provide good classes.

BCD asked what CCB is doing because their code courses are filling up with home improvement contractors and not plumbers and electricians and that is when CCB became aware of the problem. The contractors are taking the wrong courses.

Administrator Smith reported that eventually CCB could participate in a revenue stream wherein each one of the courses registered through CCB, that CCB would get a student fee for each student to help offset the cost of the continuing education and help keep fees down in the future.

Staff need to do a costs analysis for education provider approval. Ms. Fox reported that she estimates it is taking 30 to 40 staff hours to approve an education provider and course.

e. **A. Board Vote on CCB RCE CORE Provider Approval Plan:**

Board member discussed filing temporary rules.

MOTION: Tom Skaar moved that the Board direct staff to move forward with drafting temporary rules to:

- Remove the requirement that BCD must approve all CCB RCE building codes courses.
- Allow for BCD and ICC courses that have been approved to qualify by BCD but not CCB to count as CCB RCE building codes course until July 1, 2012.
- Keep the initial provide application fee at \$500, but lower the renewal fee to \$250 and keep the \$50 per credit hour fee.
- When the permanent rules are filed, include a \$5.00 per student fee.

VOTE: 9-0, Ayes— Crump, De Wolfe, Hernandez, Mangis, Merritt, Nyquist, Skaar, Trainor, and Yorke.

B. Discussion of What the Board Wants for CORE Exemptions:

Administrator Smith stated that staff recommend adopting number 4 (Contractor's that don't work on the building (at all) except: Excavation, Cement, and Asphalt Contractors) on page 212 of the Board packet for both BEST and Building Codes and fill the five hours with electives to get to the 16 hours. The contractor would sign a certification swearing that they do not touch the structure in any way, including a fence contractor that nails it against a residence, and requesting the exemption. If they violate the exemption and touch a structure, they would be fined. This is a fairly narrow exemption.

Staff recommend adopting number 5 (BCD contractors) on page 212 of the Board packet for both BEST and Building Codes and fill the five hours with electives to get to the 16 hours.

The Board discussed the exemptions on page 212 of the Board packet and made the following determinations:

5, BCD Contractors:

Board member consensus was to approve an exemption from BEST and Building Codes, but keep the requirement for CCB Laws, Regulations and Business Practices. Board members determined the exemption will be for plumbing, electrical, architects and engineers. The contractors will still have to take 16 hours of electives. HVAC contractors were removed from the exemption because the education requirements for the HVAC license is less than that of plumbers and electricians. If the HVAC licensee also has an electrical license from BCD, then they would have the exemption.

Board members did not want a posting on #5 (BCD contractors) to be placed on the website stating that they have not taken the training. These contractors have already taken courses, just not at CCB.

7, US Veteran Contractors (Active Duty):

Board members discussed tying this exemption to the rules for fees that CCB currently has. Board members discussed granting a grace period, if the party has an honorable discharge. Board members discussed those returning from active duty would get an exemption for up to 90 days prior to renewal. Some Board members suggested granting a six month extension.

Board member Mangis suggested checking Title 38 of the US Code because it has veteran reemployment rights and coming back to previous jobs, etc. There is active duty for training and active duty where they are deployed.

AAG Kathryn Lozano reported that CCB's rule is tied to Oregon Statutes for fees and is tied to an Oregon statute. It doesn't discussed continuing education, it might be simpler to tie it to what you have put into rule for fees, which is there they are free and clear as long as they are on active duty. Some of these people have been active duty for more than 18 months. Then you have a certain grace period when you get back, if you have had an honorable discharge. Something you might want to consider is having a parallel rule for continuing education waivers.

Board member Skaar suggested that if the contractor is on active duty when their renewal comes up, or maybe within 90 days thereof, then they are exempt. They are exempt if they are still on active duty and they are exempt for that cycle if they were on active duty up to 90 days prior.

Board members determined that Administrator Smith and Board member Mangis are to meet with the Director of the Department of Veteran Affairs to get assistance from ODVA in drafting a temporary rule and delegate authority to Administrator Smith to implement the temporary rule.

(Staff Action item 6.14.B.3.e.B1)

(Note: This item became unnecessary since the CCB currently has a rule in place (OAR 812-021-0015(7)) that deals with US armed forces on active duty.)

Board members directed staff to adopt temporary rules on the above two items. The contractor will fill out form to request an exemption. They would be exempt, but we don't have to post on website.

(Staff Action item 6.14.B.3.e.B2)

#4, Contractors that don't work on the building (at all) except: Excavation, cement, and asphalt contractors:

Board members discussed this option for those that do not touch the structure. Show a notation on website that they never took the courses.

Website would indicate that they have sworn that they never touch the structure. They would still have to take 16 hours of training.

Some Board members felt it would discriminate if post on website for #4 contractors and not for #5. Could put a blanket disclaimer/exemption language on website for #5 contractors and would not have to post on each license for all plumbers, electrical, architects and engineers are not required to take CCB BEST and Codes. Post on the website that there is a fine for touching the structure if you have certified that you do not touch the structure.

This item was postponed for the next meeting for further discussion.
(Staff Action item 6.14.B.3.e.B3)

C. ADMINISTRATIVE RULES

1. Review of Rules Up for Hearing June 14, 2011:

Administrator Smith discussed proposed rule amendments with Board members. The proposed rule amendments:

- Correct cite reference,
- Amend course fee,
- Continuing education credits.

2. June 14, 2011 CCB Rulemaking Hearing:

Chair Hernandez opened the administrative rulemaking hearing at 11:10 a.m.

Public Comment:

No one came forward to give public comment.

After discussion of the proposed rules, the Board made the following motions:

MOTION: Roger Nyquist moved to approve the proposed rules as written on pages 299 to 304 of the Board packet.

VOTE: 8-1, Ayes—Crump, DeWolf, Hernandez, Mangis, Nyquist, Schad, Skaar, and Yorke; Nays—Trainor.

(Note: See Attachment B for the language of the adopted rules.)

3. Temporary Rules Filed:

Administrator Smith discussed the temporary rules filed on April 28, 2011 with Board members.

4. Permanent Rules Filed:

Administrator Smith discussed the permanent rules filed on April 28, 2011, that became effective May 1, 2011, with Board members.

5. First Look for Next Board Meeting:

Staff discussed the first look rules with Board members that can be found on pages 168 through 210 of the Board packet.

D. NEW BUSINESS:

1. CCB RCE CORE:

CCB staff released the first one hour RCE CORE, *CCB Laws, Regulations and Business Practices* course on April 25, 2011. The second RCE CORE course will be launched the week of June 13, entitled *Contractor Endorsements and Structure Types: Why they matter*. The third RCE CORE course script is nearly completed and staff hope to have it ready for launch by the end of the month. This course is entitled "Preventing and Resolving Disputes with Customers". The fourth RCE CORE course will be on legislative updates and staff hope to have it completed by the end of September.

Administrator Smith reported that staff have a concept to survey the students by asking them to simply rate how the course was. Perhaps ask one or two questions. After CCB receives 100 responses, CCB could look at whether to provide feedback on the website for future students to view. It is believed this may help the courses maintain better content quality.

Board members discussed perhaps having the education providers survey the students and have an email address where the surveys are sent to CCB. CCB would provide feedback to the education providers.

Board member Nyquist expressed concern that the surveys are subject to the public records laws and CCB would have to disclose the information. The surveys may be proprietary. He also stated some mandatory courses such as BEST may not get favorable comments because they are mandatory.

Katherine Lozano, AAG, reported that the survey would be state created and state owned and would be subject to the public records law. This type of public records cannot be protected.

Board member Merritt expressed her concern at the level of the education development and the incredible effort by staff when CCB is not in the education business.

Board members expressed concern that staff may be taking on too much, but if staff can keep the survey minimal and simple and not take too much staff time, then they could support doing the survey. Board members expressed concerns that some competing education providers may send people to a competitor's class to give them a low score to help their own scores look better.

2. August 2011 NASCLA Conference and NCIA Conferences:

Administrator Smith sought Board approval for the use of state funds to attend the August 2011 NASCLA conference and the National Contractor Investigator Association (NCIA) conferences.

Board members discussed sending the Administrator to the conferences, but do not want to send very many staff to the conferences to keep costs down.

MOTION: Tom Skaar moved to approve sending Administrator Smith, the Field Investigator Manager and the Education Manager to the NASCLA and NCIA conferences in August 2011.

VOTE: 9-0, Ayes— Crump, DeWolf, Hernandez, Mangis, Nyquist, Schad, Skaar, Trainor and Yorke.

3. Structure Type Determination Chart:

Administrator Smith and Education Manager Gina Fox discussed the structure type determination chart with Board members. Board members were impressed with the quality of the chart Ms. Fox created.

E. CCB PROGRAM ISSUES:

1. Administrative Services:

a. Quarterly Report:

Quarterly reports will be available at the September 27, 2011, Board meeting.

2. Education:

a. Quarterly Report:

Quarterly reports will be available at the September 27, 2011, Board meeting.

3. Licensing/CSU:

a. Quarterly Report:

Quarterly reports will be available at the September 27, 2011, Board meeting.

4. Field Investigations:

a. Quarterly Report:

Quarterly reports will be available at the September 27, 2011, Board meeting.

5. Enforcement:

a. Quarterly Report:

Quarterly reports will be available at the September 27, 2011, Board meeting.

6. Dispute Resolution Services (DRS):

a. Quarterly Report

Quarterly reports will be available at the September 27, 2011, Board meeting.

b. Weekly Statistics:

Due to time constraints this item was not discussed.

Items for the Possible August 9, 2011, Board Meeting:

1. Status of RCE Program:
 - RCE Revised Business Plan
 - Temporary Rules for RCE Program
 - Feedback from Licensees Regarding RCE Exemptions
 - Report on RCE Approved Providers
2. Additional RCE Exemptions:
 - “Don’t Touch the Structure”, Exemption?

Agenda Items for the September 27, 2011 Meeting:

- Administrative Rules
- Legislation
- Budget

Adjournment

The meeting adjourned at 12:57 p.m.; and the Appeal Committee meeting adjourned at 2:05 p.m. The next Board meeting and Appeal Committee meeting are scheduled for September 27, 2011.

Sincerely,

Catherine Dixon
Board Secretary

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ATTACHMENT A

MINUTES OF THE JUNE 14, 2011 CONSTRUCTION CONTRACTORS BOARD APPEAL COMMITTEE MEETING

The Construction Contractors Board Appeal Committee met on Tuesday, June 14, 2011, at West Salem Roth's IGA, Santiam Room, 1130 Wallace Rd NW, Salem, Oregon. Appeal Committee Members present included: Chair Rob Hernandez, Chuck Crump, Richard DeWolf, Jon Mangis, Kathryn Merritt, Roger Nyquist, Sandy Trainor, and Rob Yorke. Board member Tom Skaar was excused from the meeting. Construction Contractors Board staff present were: CCB Administrator Craig P. Smith, Enforcement Manager Richard Blank, Dispute Resolution Manager Bill Boyd, Education Assistant Holly Eilertson, and Board Secretary Catherine Dixon. Assistant Attorney General Katherine Lozano was also present.

Guests Included: Bonnie Sullivan

Chair Hernandez opened the Appeal Committee at 1:05 p.m. to hear exceptions on the following case:

1. Complaint No. 100079-101, Laurie Rubenstein and Robert Raczkowski (Complainant) vs. Urban Renaissance LLC (Respondent).

Respondent's Attorney Stephen Eichelberger stated that before the appeal gets started he believed the complainant's attorney had brought up a procedural matter and that it was something that would be addressed at this time.

The Appeal Committee went into Executive Session to discuss the procedural matter with legal counsel under ORS 192.660(2)(h).

The Appeal Committee Chair reopened the meeting and read the following statement: The Committee has determined to exclude testimony referring purported oral testimony from the hearing that was not transcribed. Respondent failed to comply with the requirements of OAR 812-009-0400 and the Committee is exercising its discretion to exclude for consideration any such evidence and arguments.

The Appeal Committee meeting reconvened.

1. Complaint No. 100079-101, Laurie Rubenstein and Robert Raczkowski (Complainant) vs. Urban Renaissance LLC (Respondent). Attorney Molly Allison appeared before the Board to represent the Complainants (Laurie Rubenstein and Robert Raczkowski). Attorney Stephen Eichelberger appeared before the Board to represent the Respondent (Urban Renaissance LLC).
2. Complaint No. 169629-101, Gary W Cook (Complainant) vs. Artistic Touch Plastering Co. (Respondent). The Complainant, Gary W. Cook, appeared before the Board. The Respondent (Artistic Touch Plastering Co.) did not appear before the Board.

The Appeal Committee retired to deliberate under ORS 192.690. The meeting was reconvened and the Appeal Committee made the following decisions:

1. Complaint No. 100079-101, Laurie Rubenstein and Robert Raczkowski (Complainant) vs. Urban Renaissance LLC (Respondent).

MOTION: Roger Nyquist moved to affirm the Administrative Law Judge's opinion in complaint no. 100079-101, and make clear that part of this motion being that we are not requesting a change in the findings of facts nor changing conclusions, but we request staff to modify the analysis to strengthen the final order.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Mangis, Merritt, Nyquist, Trainor and Yorke.

2. Complaint No. 169629-101, Gary W Cook (Complainant) vs. Artistic Touch Plastering Co. (Respondent).

MOTION: Chuck Crump moved to affirm the Administrative Law Judge's order and that the respondent shall pay the complainant \$367, plus the \$50 processing fee for a total of \$417.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Mangis, Merritt, Nyquist, Trainor and Yorke.

The meeting adjourned at 2:05 p.m. The next Appeal Committee meeting is scheduled for September 27, 2011.

Respectfully submitted,

Catherine Dixon
Appeal Committee Secretary

ATTACHMENT B

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

- (1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and
- (2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and
- (3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and
- (4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.
 - (a) A “complaint for damages” as used in section (4) of this rule includes, but is not limited to:
 - (A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or
 - (B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and
- (5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and
- (6) \$500 per offense for failure to respond to the agency’s request for the list of subcontractors required in ORS 701.345; and
- (7) \$1,000 per offense for hiring an unlicensed subcontractor; and
- (8) For failing to provide an “Information Notice to Owners about Construction Liens” as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.
- (9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.
- (10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.
- (11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense warning, second offense \$50, subsequent offenses \$200.
- (12) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.
- (13) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.
- (14) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.
 - (a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.
 - (b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.
- (15) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.
- (16) Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.
- (17) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.
- (18) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(19) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(20) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(22) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(23) When, as set forth in ORS ~~701.098(1)(g)~~ **701.098(1)(h)**, the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(24) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(25) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(26) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(27) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(28) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(29) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(30) Violation of work practice standards for lead-based paint (LBP) activity pursuant to OAR 812-007-0140 or 812-007-0240 first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 plus suspension of license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(31) Violation of work practice standards for LBP renovation pursuant to OAR 812-007-0340 or violation of recordkeeping and reporting requirements pursuant to OAR 333-070-0110: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 and suspension of the certified LBP renovation contractor license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(32) Violation of OAR 812-007-0100, 812-007-0200 or 812-007-0300: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000. The civil penalty is payable to the Construction Contractors Board Lead-Based Paint (LBP) Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(33) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(34) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(35) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(36) Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(37) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

(38) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(39) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or ORS 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(40) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(41) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

(42) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(43) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(44) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

(45) Undertaking, offering to undertake, or submitting a bid to work as a locksmith when an individual is not certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(46) Undertaking, offering to undertake, or submitting a bid to provide locksmith services when a business is not a licensed construction contractor or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(47) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the individual is a locksmith, unless an individual is certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(48) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the business providing locksmith services, unless a business (a) is a licensed construction contractor and (b) is owned by or employs a certified locksmith or is otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(49) Violating any applicable provision of the rules in division 30, including violating any standard of professional conduct other than OAR 812-030-0300(4): first offense, \$1,000; second offense, \$3,000; third offense, \$5,000 and revocation of the certificate.

(50) Violating OAR 812-030-0300(4): first offense, \$200; second offense, \$500; third offense, \$1,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235, 701.515, 701.992 & 701.995

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.480, 701.485, 701.510, 701.515, 701.992 & 701.995

(4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/85, 4/85, 1/87, 3/87, 1/88, 2/88, 6/88, 1/89, 11/89, 2/90, 3/90, 4/90, 5/90, 6/90, 7/90, 10/90, 11/90, 3/91, 9/91, 1/92, 2/92, 4/92, 6/92, 5/93, 12/93, 1/95, 9/95, 10/95, 8/96, 10/98), temp. 11/99, 5/00, 6/00, temp. 11/00, 4/01, 12/01, temp. 3/02, 3/02, 6/02, 9/02, 12/03, 6/04, 12/04, 12/05, 1/06, 6/06, 12/06, 6/07, 2/08, 6/08, 9/08, 11/08, 1/09 (eff. 2/1/09), 5/09, 2/10, 4/10, temp. 7/10, 2/11 eff. 3/1/11, 6/11)

812-021-0016

Fees for Agency Courses – Continuing Education for Residential Contractors

(1) The agency ~~will~~ **may** charge a fee of ~~[\$35]~~ **\$15** per course hour for the following courses:

(a) ~~[BEST]~~ **Building Exterior Shell (BEST)**, offered by the agency as provided in OAR 812-021-0015(3)(a)(A).

(b) ~~[Education on laws, regulations, and business practices]~~ **Construction Laws, Regulations, and Business Practices**, offered by the agency as provided in OAR 812-021-0015(3)(a)(C) and 812-021-0015(4)(a)(B).

~~[(2) If a person purchases three or more one hour courses from CCB in a single transaction, CCB will charge a fee of \$33 per course hour.]~~

~~[(3)]~~ (2) In addition to the fee for the course, CCB may charge for processing, shipping and handling course materials made available other than online.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(8/10 eff. 9/1/10, temp 4/28/11, 6/11)

812-021-0019

Elective Hours – Continuing Education for Residential Contractors

(1) Elective hours may be earned by attending construction or construction business related offerings provided by any of the following:

- (a) Post-secondary institutions such as colleges or universities;
- (b) Trade schools;
- (c) Trade associations;
- (d) Professional societies;
- (e) Private companies;
- (f) Public agencies;
- (g) Business associations;
- (h) Contractor-provided in-house training programs;
- (i) Non-profit organizations; or
- (j) Manufacturers or businesses in the construction industry.

(2) Elective hours may be earned by attending trainings or demonstrations offered by building component manufacturers on product use, capabilities, or installation.

(3) Elective hours may be earned by attending education classes required to maintain another construction industry license, such as a certified home inspector or a registered professional engineer.

~~[(4) Elective hours may be earned by participating as an officer of a construction trade or professional association or as a member of a contractor licensing board. Credit for continuing education earned under this subsection is limited to two (2) hours per license period.]~~

~~[(5)]~~ (4) Elective hours may be earned by completing core classes not otherwise completed for core credit.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

(6/09, 6/11)