



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

August 7, 2008

Members Present:

Dan Linscheid, Chair

Ed Butts

Grant Davis

Ken Hoffine

Staff Present:

Mari Lopez, Executive Secretary

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG

John Seward

The meeting was called to order at 10:12 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301.

Chair Linscheid announced that prior to the meeting of the Law Enforcement Committee (LEC) an informal conference was conducted regarding law enforcement case number 2488. The LEC reviewed additional documentation submitted by the respondent and recognized that he had fulfilled the remaining terms of the understanding. The LEC and the respondent reached a settlement agreement that his registration to practice land surveying would be revoked and that the LEC would waive the \$13,000 civil penalty. **The LEC will recommend approving the settlement agreement during the September Board meeting.**

Cases Reviewed

2396

Both the respondent and the complainant are registrants of the Board and are employed by the Oregon Department of Transportation (ODOT). The respondent is employed as the Director of Technical Services and the complainant is employed as a control systems engineer.

As the result of a Professional Practices Committee (PPC) discussion on February 24, 2005, the PPC advised that plans and specifications comprise contract documents and are to be sealed and signed by the engineer in responsible charge. Second, the PPC discussed that a project engineer should ensure that a particular standard drawing is appropriate to their project and should not rely on a standard drawing for direct application to a specific engineering need. Third, the PPC advised on project addenda noting that the Board focus is on the lawful practice of engineering by ensuring that the designated engineer has appropriate credentials and has oversight of the products being stamped and signed. The PPC urged the complainant to file a complaint if he has knowledge of individuals practicing outside of Oregon Revised Statute (ORS) 672 and Oregon Administrative Rules (OAR) 820.

Subsequently, complaints were filed for cases 2396 and 2397 regarding the October 2005 project, I-5: N. Santiam Highway – Kuebler Boulevard (Salem) Section (Plans) and the Plans specifications document, Special Provisions for Highway Construction.

The LEC discussed the outcome of the interviews with the complainant on May 28, 2008, and with the respondent on June 12, 2008, regarding the ODOT practices. The respondent had noted that standard drawings were stamped by the responsible ODOT engineer for archival purposes. However, the Board received project Plans as evidence for the complaint showing that standard drawings were distributed to the public with an added disclaimer statement, but without a seal and signature consistent to OAR 820-010-0621(2). The Plans also showed examples where a reference on a sealed drawing was not clear about the standard drawing, a specific standard detail, or notation. The LEC reiterated that engineers who reference a standard drawing on their sealed drawing take responsibility for the engineering work on the unsealed standard drawing. The LEC members observed that Board rules could be modified to include guidance regarding standard drawings and details. **The LEC will request that the Rules and Regulations Committee (RRC) address this issue since the use of standard drawings is an industry practice.**

Regardless, a signed professional seal had been used by some of the ODOT employees to indicate compliance with the ODOT administrative processes, which is a misuse of the seal and signature. Under the ORS 672.020(2), the seal and signature “constitute certification that the document was prepared by the registrant or under the supervision and control of the registrant.” The respondent affixed her seal and signature to the Plans to indicate compliance with the ODOT policies and procedures, consequently, violating the ORS 672.020(2). The LEC declared those registrants who seal and sign documents are doing so in conformance with the requirements set forth in the ORS 672 and the OAR 820. As a result of the interview with the respondent, the LEC recognized that the ODOT has made policy changes to modify the practice. **The LEC recommends closing the case by sending the respondent a letter of concern regarding the use of her seal and signature.**

2397

The respondent met with members of the Board on May 28, 2008, to discuss the complaint. The complainant prepared the plans and specifications for the project, but stated that he was not allowed to seal and sign the specifications document that were distributed to the public. Rather, the respondent sealed and signed the contract specifications coversheet. The Plan specifications,

including the complainant's, were not prepared under the respondents supervision and control as per ORS 672.002(10). As a result of the interview with the respondent, the LEC recognized that the ODOT has made policy changes to modify the practice. . **The LEC recommends closing the case by sending the respondent a letter of concern regarding the use of his seal and signature.**

2406

The complainant alleged that the respondent failed to follow the Rules of Professional Conduct, or exercise a standard of care, in designing a retaining wall that subsequently was involved in a landslide in Astoria, Oregon. The LEC discussed the findings of the expert reviewer that were presented at the June 3, 2008, LEC meeting and the scope of work the respondent prepared for the project. The LEC noted that the respondent included a task in the scope of work to "complete global stability and settlement analysis for the most critical wall height." The LEC determined that the respondent did not follow a standard of care in conducting the global stability analysis. As a result, the LEC directed staff to issue a Notice of Intent to Revoke Registration and Assess a Civil Penalty of \$1,000 for violating the OAR 820-020-0015(2).

2431

The complainants alleged that the respondent prepared an engineering report when she was not registered with the Board regarding a possible energy conservation project at the City of Prineville wastewater treatment facility. The respondent listed her title on the report as a Senior Process Engineer when, at the time, she was not registered with the Board. The LEC also determined that the City of Prineville report the respondent prepared offered engineering recommendations based on observations. The LEC member Ed Butts volunteered to aid staff in identifying the engineering aspects of the report. The LEC directed staff to issue a Notice of Intent to Assess a Civil Penalty of \$2,000 for violating the ORS 672.007(1)(a) and (c) and the ORS 672.045(1).

2467

The complainant alleged that the respondent prepared a map of survey that was submitted to the County Surveyor past the 45 days required to submit a map for filing. The filed map showed 3.0 feet offset to a property corner without noting the monument as a witness monument. Therefore, he did not mark the property corner and no physical impediment was noted on the map of survey as to the reason for the offset. Furthermore, the respondent wrote on the filed map of survey that the complainant directed him to offset the property monument. The LEC observed that the respondent made an untruthful statement as the map of survey he provided to the complainant did not show the offset. The LEC directed staff to issue a Notice of Intent to Revoke Registration and Assess a \$3,000 Civil Penalty for violating the ORS 209.250(1), the ORS 672.025(2), the ORS 672.200(2), the OAR 820-010-0621(2), the OAR 820-020-0015(10), the OAR 820-020-0025(1), the OAR 820-030-0060, and the OAR 820-030-0070.

2468

The complainants stated that the respondent surveyed the property adjacent to their property. However, the respondent allegedly failed to provide proper notice of right of entry. In the course of the survey, he set a monument and found an existing monument to mark the common boundary. Regardless of the respondent's claim that he remained on his client's property, a right

of entry violation may have occurred based on the acts of setting and surveying the monuments. However, no violation of the 45-day requirement to file a map of survey was found. The LEC directed staff to conduct additional investigation regarding whether the respondent provided proper right of entry notice under the ORS 672.047.

2469

This complaint is related to case number 2468 in that the respondent hired the surveyor in case number 2468 to survey his property. The complainants alleged that the respondent removed a monument of survey. However, the investigation revealed that the surveyor did not accept the iron rod as a boundary monument, so the respondent did not remove a monument of record. Also, no evidence supported the allegation that the worker the respondent hired pulled the monument. More likely, the alleged monument was a grounding rod for the adjacent power pole. **The LEC recommends closing the case as allegations unfounded.**

2474

The complainants alleged that the respondent surveyed their property and was negligent and failed to provide proper right of entry notice. Mr. Wilkinson conducted a field investigation in conjunction with the complainants and a third party observer Gerald Riley, the respondent, and the Deschutes County Deputy Surveyor. It was found that the respondent surveyed the property adjacent to the complainants. No evidence supported the allegation that the respondent surveyed the complainants' property. Rather, the field investigation revealed that unknown parties had engaged in illegal surveying activity resulting in the complainants' property being entered upon and mismarked. However, the respondent failed to provide notice of right of entry prior to setting monuments common to the complainants' property. The LEC directed staff to prepare a Notice of Intent to Assess a \$1,000 Civil Penalty for violating the ORS 672.047.

2475

The complainants alleged that the respondent failed to submit a map of survey within 45-days of setting boundary monuments when he conducted a survey for their neighbors. During the course of the survey, the respondent determined a resolution for the center of the section that was different than the monumented center of section. Through consultation with the County Surveyor, it was found that the respondent correctly located the center of section. This difference adjusted affected property lines. Nevertheless, the respondent failed to request a timely extension to file the record of survey. The LEC directed staff to prepare a Notice of Intent to Assess a \$1,000 Civil Penalty for violating the ORS 209.250(1).

2476

The complainant alleged that a field crew working under the supervision of the respondent failed to provide right of entry notice when they entered his property to conduct a survey of the adjacent property. The respondent believed that notice was provided to the property owner, mother of the complainant, by his client who was the developer of the adjacent property. The owner of the property denied receiving notice. The ORS 672.047(4) requires that the professional land surveyor or their employee or agent provide notice. The LEC directed staff to prepare a Notice of Intent to Assess a \$1,000 Civil Penalty for violating the ORS 672.047.

2484

A private investigator submitted an email to the Board on behalf of the complainants. The email alleged a right of entry violation with property damage caused by the respondent. Upon preliminary review of the inquiry, a letter was sent to the complainants requesting that they submit a complaint form and complaint description. No response was received. Subsequent voicemail messages left for the private investigator were unanswered and the complainant's telephone number had been disconnected. **The LEC recommends closing the case as insufficient evidence.**

New Business

Civil Penalties: Assess interest on civil penalty payments

The Board currently assesses interest on the unpaid balance of civil penalties (15%) once the responsible party fails to make payments and is turned over for collection to the Department of Revenue. Staff was recently informed that the Board may opt to include interest for those individuals who wish to make payments on a civil penalty rather than paying up-front the penalty. The LEC discussed whether or not to include interest assessment in rule and determined that a rule was not necessary as long the interest charged was included in a settlement agreement. Moreover, the LEC did not agree to assess interest on those individuals who agree to a payment plan through a settlement agreement.

PLS: Memorandum on conviction

The Board received an anonymous complaint regarding a registrant. The registrant recently pled guilty to multiple counts of sexual abuse and sodomy. According to the ORS 672.200(3), the Board can take action against a registrant "for conviction of a felony, or of a misdemeanor involving the practice of engineering or the practice of land surveying." Since the charges against the registrant are unrelated to the practice of land surveying, the LEC determined not to open a case file.

Retired professional engineer who has practiced

The respondent a retired PE contacted the Board regarding reactivation of his professional engineering registration. In the course of discussion, the respondent admitted to practicing engineering during his retirement contrary to the limitations set forth in the OAR 820-010-0520(2). The LEC directed staff to open a law enforcement case.

Unfinished Business

2453

During an evaluation of her applications to the Oregon Office of Minority, Women, and Emerging Small Business Enterprise (Office), it was found that the respondent may have offered engineering services without employing a full time engineer consistent to the OAR 820-010-0720. Additional investigation is needed to identify what the rule required at the time the applications were submitted to the Office and to reevaluate the applications against the prior rule versions. Further discussion will be held in October.

2464

Mr. Wilkinson has been unable to schedule arrangements with the City of Springfield to review their archived files regarding this case. Further discussion will be held in October.

2466

A request to the Oregon State Board of Geologist Examiners (OSBGE) for a copy of their investigation documents resulted in an offer to examine the file at the OSBGE office. However, Mr. Wilkinson will prepare a public records request for the documents. Further discussion will be held in October.

Continuing Professional Development Audit Memorandums: Review CPD memorandums

The Board completed a random audit of registrants for compliance to the continuing professional development (CPD) requirements set forth in the OAR 820-010-0635 and the OAR 820-015-0026. According to the OAR 820-015-0026(1), an individual found in violation of the rules regarding CPD may face a two-year suspension of their professional registration(s). The Board may also assess a maximum civil penalty of \$1,000.

Four registrants were to receive a Notice of Intent to Assess a \$1,000 Civil Penalty for violations involving the failure to notify the Board of an address change (OAR 820-010-0605), failure to provide CPD documentation (OAR 820-020-0015(7)), and the failure to cooperate with the Board (OAR 820-020-0015(8)).

Two registrants were to receive a Notice of Intent to Assess a \$1,000 Civil Penalty for violations involving the failure to notify the Board of an address change (OAR 820-010-0605) and the failure to cooperate with the Board (OAR 820-020-0015(8)).

One registrant was to receive a Notice of Intent to Suspend and Assess a \$1,000 Civil Penalty for violations involving the failure to provide CPD documentation (OAR 820-020-0015(7)) and the failure to cooperate with the Board (OAR 820-020-0015(8)).

One registrant was to receive a Notice of Intent to Suspend and Assess a \$1,000 Civil Penalty for violations involving the failure to comply with the CPD requirements (OAR 820-015-0026) and the failure to provide CPD documentation (OAR 820-020-0015(7)).

One registrant was to receive a Notice of Intent to Assess a \$1,000 Civil Penalty for violations involving the failure to comply with the CPD requirements (OAR 820-015-0026), the failure to provide CPD documentation (OAR 820-020-0015(7)), and the failure to cooperate with the Board (OAR 820-020-0015(8)).

One registrant was to receive a Notice of Intent to Assess a \$1,000 Civil Penalty for violations involving the failure to comply with the CPD requirements (OAR 820-015-0026) and the failure to provide CPD documentation (OAR 820-020-0015(7)).

Six registrants were to receive a Notice of Intent to Assess a \$1,000 Civil Penalty for violations involving the failure to provide CPD documentation (OAR 820-020-0015(7)) and the failure to cooperate with the Board (OAR 820-020-0015(8)).

One registrant was to receive a Notice of Intent to Suspend and Assess a \$1,000 Civil Penalty for violations involving the failure to provide CPD documentation (OAR 820-020-0015(7)) and failure to cooperate with the Board (OAR 820-020-0015(8)).

One registrant was to receive a Notice of Intent to Assess a \$1,000 Civil Penalty for violations involving the failure to cooperate with the Board (OAR 820-020-0015(8)).

One registrant was to receive a Notice of Intent to Suspend and Assess a \$1,000 Civil Penalty for violations involving the failure to cooperate with the Board (OAR 820-020-0015(8)).

One individual was to receive a request for additional documentation. One individual was eligible for the grace period under the OAR 820-015-0026. One individual was to receive a notice regarding retirement requirements. One individual will be sent an audit notice to a new address.

Professional Reviewer Applications

The Board received three applications for the professional reviewer program.

The LEC discussed the professional reviewer application of a registrant PE, and noted his expertise in wood structure framing. However, the LEC found that he is likely not familiar with Oregon's standard of care in this field since he lives and practices in Idaho. Furthermore, his billing rate is not in conformity with the rates offered by the OSBEELS. **The LEC recommends not approving registrant as an expert reviewer.**

The LEC discussed the professional reviewer application of Roy Kenneth MacMillan, PE, and found that his qualifications and application met the requirements of the professional reviewer program. **The LEC recommends approving MacMillan as an expert reviewer.**

The LEC discussed the professional reviewer application of Wendell T. Harness, PLS, and found that his qualifications and application met the requirements of the professional reviewer program. The LEC also noted that Harness should replace the current professional reviewer for case 2502. **The LEC recommends approving Harness as an expert reviewer.**

The LEC discussed the approved professional reviewer of registrant PE, PLS. Registrant recently notified Mr. Wilkinson that he had not renewed his professional registrations and was delinquent. The adopted Professional Reviewer and Expert Witness Selection Procedures do not identify the steps necessary to remove an approved reviewer from the pool of experts. When registrant's Statement of Qualifications (SOQ) was reviewed, it was noticed under SOQ Mandatory Requirements Section 3.2.10, that a reviewer must hold an active registration with the Board or "*must have sufficient academic credentials in geomatics as to demonstrate expertise in their field of discipline.*" The LEC found that the academic credentials statement conflicts with the requirements set forth in the OAR 672.005(2)(g). **The LEC recommends the following for approval during the September Board meeting: 1) remove registrant as a professional reviewer; 2) revise the Procedures to include steps to remove an approved reviewer; and 3)**

revise the SOQ to remove the statements regarding academic credentials from Sections 3.2.9, 3.2.10, and 3.2.11.

Settlement Agreement Monitoring:

LEC Cases Subject to Monitoring and LEC Cases Subject to Collections: The LEC reviewed the LEC Cases Subject to Monitoring and the LEC Cases Subject to Collections and offered no comments.

Case Status Report:

The Committee briefly reviewed the case status list.

The meeting adjourned at approximately 2:30 p.m.