



Oregon

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

670 Hawthorne Ave. SE, Suite 220

Salem, OR 97301

(503) 362-2666

Fax (503) 362-5454

E-mail: osbeels@osbeels.org

LAW ENFORCEMENT COMMITTEE

Meeting Summary

February 12, 2009

Members Present:

Dan Linscheid, Chair

Ed Butts

Grant Davis

Ken Hoffine

Staff Present:

Mari Lopez

James R. (JR) Wilkinson

Others Present:

Joanna Tucker-Davis, AAG

Katharine Lozano, AAG

David Bassett, PE

The meeting was called to order at 1:00 p.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 three informal conferences were scheduled prior to the meeting of the Law Enforcement Committee (LEC). The LEC make their recommendations as below.

Informal Conferences

2460 and 2477

The LEC combined law enforcement cases numbered 2460 and 2477 and issued the respondent, a Notice of Intent to Assess a Civil Penalty of \$3,000 for violating Oregon Revised Statute (ORS) 672.020, Oregon Administrative Rule (OAR) 820-010-0620(2),(4), OAR 820-010-0621(1),(2), and OAR 820-020-0015(9),(10) when the respondent failed to properly seal and sign final engineering documents. In case #2460, the respondent explained that he prepared a set of specifications for the replacement of two HVAC systems for the Jackson County School Board, Medford School District 549C Invitation to Bid (ITB). The ITB was on a fast track for summer construction. However, the respondent did not affix his seal and signature to the first set of published specifications and did not affix his expiration date to the second set. In case #2477, the respondent used his scanned signature to electronically sign 48 pages of a bidding purposes only plan set for the ITB. The client received wet signature originals for permitting purposes.

Upon conferring, the LEC entered into a settlement agreement with the respondent wherein the respondent admitted to the violations and was assessed \$250 per violation for a total civil penalty of \$750. **The LEC recommended that the Board approve the settlement agreement.**

2470

The LEC met in an informal conference with the respondent, an SE, to discuss a Notice of Intent to Assess a Civil Penalty of \$3,000 for violating OAR 820-010-0622(1)(c) and OAR 820-010-0623. The respondent added five seismic bracing designs to mechanical engineering plans that the complainant, another PE, prepared for a Salem project. The respondent stated he did not modify the complainant's engineering designs, but indicated his bracing designs by bold lines. A bracing schedule was next to his seal and signature that were affixed in red ink. However, the methods the respondent used to indicate the additions were not clear, which caused confusion particularly when the plans were printed in black and white.

The LEC members questioned the respondent as to clouding or to other ways that clearly link his bracing designs to the schedule and to his seal and signature. In reply, the respondent noted trying various methods to avoid clouding when a mechanical engineer also indicates modifications by using clouds. The respondent explained that they work with a number of mechanical engineers who accepted the method since the plans are given back to them for review and approval. The LEC and the respondent discussed other ideas for how to show his modifications on plans. However, the LEC declared that they could not dictate practices, but whatever modifications the respondent added must be compliant to the OAR 820-010-0622(1)(c) requirement to "*cloud, encircle, or in some other way clearly indicate that portion of the design or document they are changing or revising.*" The respondent also produced a disclaimer that was reviewed. The LEC observed that it did not resolve the confusion created by not clearly linking his design additions to his seal and signature. Upon conferring, the LEC determined that the violations did not warrant disciplinary action. **The LEC recommended closing the case by sending the respondent a letter of concern regarding requirements under OAR 820-010-0622(1)(c).**

2453

The respondent an, EI, and the respondent's attorney met with the LEC to discuss a Notice of Intent to Assess a Civil Penalty of \$1,000 (NOI) for violating the "resident engineer" requirement of OAR 820-010-0616(2), which was the predecessor to OAR 820-010-0720. On October 28, 1999, the respondent submitted an application to the Oregon Office of Minority, Women, and Emerging Small Business (OMWESB) requesting certification to perform engineering services. The NOI was for failing to identify the professional engineer in responsible charge of engineering projects at the time of the application. The respondent's Attorney stated the 1999 application was for a certification program the OMWESB administered and was not an offer to practice engineering. The application instructions required the respondent to identify her business sector based on U.S. Department of Transportation codes. The closest related code was "engineering services." The respondent's attorney also submitted additional evidence from the OMWESB that clarified the agency's position regarding the application and coding process. The LEC found that the respondent corrected the representation on later applications and, as a result, met compliance.

The LEC then turned to discuss other issues that arose as the result of the investigation, including the original allegations, allegations of unlicensed practice, and ongoing concerns. The original complainant alleged that the respondent misrepresented herself as a professional engineer in two news articles. The investigation revealed that the articles' authors misrepresented the respondent's qualifications, so the LEC found the allegations were unfounded.

In July 2001, the Board received a complaint regarding allegations of the respondent practicing engineering without a resident engineer on staff. The respondent responded to the inquiries that Dave Luneke, PE, was a staff project engineer. Luneke also submitted correspondence in April 2003 wherein he stated he was the resident engineer for the respondent's company. On May 23, 2008, he wrote an examination reference for the respondent stating he had provided supervision of her engineering services since 1997. For various reasons, the earlier allegations were unresolved and were rolled for consideration into the current investigation. Upon review, the LEC found that the respondent had met compliance. Finally, there were two ongoing issues that were also discussed.

The first ongoing concern involved the respondent's company advertising land surveying services on their Web site. The respondent's Attorney provided payroll records and the Oregon professional land surveying certificate for a PLS. The payroll records showed that the PLS is an employee of the respondent's company. The LEC found that the allegations of unlicensed land surveying were unfounded. The second ongoing concern was a listing on Superpages.com that showed "the respondent as a PE." However, the investigation revealed that the listing was a free service and one that the respondent did not request. As a result, the LEC determined that the allegations were unfounded.

After further discussion about the foregoing, the respondent's attorney noted that these were not situations where the respondent purported or acted as a licensee when she was not. It was not and is not her intent to represent herself as a registrant. She has a professional engineer and a land surveyor on staff compliant to the OAR 820-010-0720 requirements. The question arose of the LEC making suggestions regarding the respondent's Web site. In reply, the LEC cannot require or dictate business practices on how to portray employees. The Board issues rules to guide practices, including OAR 820-010-0720, which registrants must follow.

Upon conferring, the LEC determined that the respondent had either met compliance or the allegations were unfounded and the LEC therefore would waive the civil penalty. The LEC remained concerned, however, about compliance to OAR 820-010-0720. **The LEC recommended closing the case by sending the respondent a letter of concern regarding requirements under OAR 820-010-0720.**

Cases Reviewed

2438

The complainant, a Deschutes County Building Official, alleged that the respondent, a PE, failed to make required modifications to engineering documents submitted for County review. The respondent prepared engineering documents for a single-family residence including 55 pages of structural calculations and 49 pages of a project manual. A Deschutes County plans examiner placed a hold on the plans until questions were resolved regarding the foundation hold down

anchors and sill plate J-bolts. The investigation revealed that the modifications were completed to the County's satisfaction. Regardless, the engineering involved an exempt structure. **The LEC recommended closing the case as allegations were unfounded and the Board lacks jurisdiction.**

2443

The complainant was a former Douglas County Building Official who alleged that the client of the respondent, a PE, had to hire another engineer in order to complete an engineering project. However, the complainant did not provide any description of the allegation other than to provide a copy of his plan review letter dated April 25, 2005, along with calculations sealed and signed by the respondent. A subsequent review letter by another Douglas County Building Official showed that the respondent had continued problems conforming to the provisions of the Oregon State Structural Specialty Code. The LEC recommended issuing a NOI on December 11, 2008. While preparing the NOI, however, an investigator discovered the original plans sealed by the respondent and this new evidence was examined by LEC member Grant Davis, SE. The LEC reviewed a Davis report wherein he identified five deficiencies that were sufficient to support issuing the NOI. The LEC determined to issue the respondent a Notice of Intent to Revoke Registration for negligence or incompetence in the practice of engineering violating the ORS 672.200(2),(4), OAR-010-0621(1)(2), OAR 820-020-0015(1),(2), and OAR 820-020-0020(1),(2).

2463

The complainant alleged that the respondent, a PE, violated the rules of professional conduct when the respondent prepared an engineering certificate for construction stating that the structure was safe and had met specific, required corrections. The complainant hired a construction contractor to complete an addition to his family's residence and the respondent was hired to prepare beam calculations. After construction began, the complainant questioned the stability of the addition and asked that the respondent be contacted. The respondent prepared a letter outlining ten structural corrections. Later, the respondent reviewed the work and sealed and signed a letter that nine of the corrections had been completed. However, the complainant hired a third-party who determined that the number of issues with the as-built addition would require demolition to properly correct. The investigation revealed that the respondent was hired to prepare only the beam calculations and was not involved in the design or construction of the addition. His letter identified issues only with the structural beam. Furthermore, the addition is for an exempt single-family residence. **The LEC recommended closing the case as allegations unfounded and the Board lacks jurisdiction.**

2464

The LEC issued the respondent a Notice of Intent to Assess a \$3,000 Civil Penalty for the unlicensed practice of engineering violating ORS 672.007(1)(a),(c). The respondent was represented by an Attorney in an informal conference with the LEC on December 11, 2008. The respondent worked for T-Mobile and signed two documents as a "RF Engineer" to the City of Springfield in support of a T-Mobile permit application to construct a 120-foot steel monopole wireless communication facility within an existing shopping center. The City of Springfield denied the application. The respondent's attorney asserted that the respondent did not violate ORS 672 because he was covered by the exception under ORS 672.060(6). However, the LEC

remained firm that City of Springfield code required an Oregon registered engineer to sign documents. The LEC offered the respondent's attorney a settlement agreement, which was rejected by T-Mobile corporate headquarters.

On January 13, 2009, the Board discussed options to settle the case and determined to issue a second counteroffer wherein the Board would find that the respondent violated ORS 672 in two instances for the unlicensed use of "RF Engineer" and in one instance for the unlicensed practice of engineering when he prepared a report for the City of Springfield. The civil penalty would be reduced to \$1,500. The respondent's attorney responded to the counteroffer on February 4, 2009, stating that the respondent believed he had not violated ORS 672 and therefore was rejecting the offer. The respondent's attorney withdrew the hearing request and paid the \$3,000 civil penalty. **The LEC recommended that the Board approve the respondents Default Final Order.**

2466

The respondent, President of a Colorado based company, was hired by Rogue Aggregate (RA) to review the gravel mining operating permit application for Rock-N-Ready (RNR) to expand their source pit in Jackson County. The complaint was a referral from the Joint Compliance Committee, which is a cooperative effort of the Board and the Oregon State Board of Geologist Examiners (OSBGE) to investigate overlapping professional practices that involve law enforcement allegations. In this case, a PE prepared the supporting geotechnical and engineering reports. On several occasions, the respondent referred to his engineering concerns. However, the investigation revealed that the respondent presented only ongoing critical analyses of the publically available permit application information and of the models generated by the RNR engineering consultants. As a result, the respondent did not offer or perform original engineering designs or calculations. Furthermore, the respondent's company employs two Oregon registered engineers. **The LEC recommended closing the case as allegations unfounded.**

2472

The complainant alleged that the respondent, a PE, violated the rules of professional conduct when he prepared a faulty engineering design for a failed retaining wall. The complainant hired the respondent in April 2004 to design a retaining wall for a house on Gold Beach property. The respondent prepared and sealed a set of engineered drawings submitted for permitting to the Curry County Building Department. The retaining wall was a step design, 110' in length, which encompassed three sides of a hill. The house was built after wall construction was completed in August 2004. On October 19, 2005, the respondent sealed and signed a certificate of completion for the Building Department stating he had observed construction and it was constructed as per design. He recommended approval. The wall failed in December 2005 causing property damage. Shortly after the failure, the respondent wrote the complainant stating that the wall was not constructed as it was designed, that he had not inspected the wall, and that he should not have verified its construction. The investigation found that the respondent also had sealed engineering designs not done under his supervision. The LEC determined to issue the respondent a Notice of Intent to Revoke Registration and Assess a \$7,000 Civil Penalty for negligence or incompetence in the practice of engineering violating ORS 672.020(2), ORS 672.200(2),(4), OAR-010-0622, OAR 820-020-0015(2), and OAR 820-020-0025(1).

2476

The complainant alleged that a field crew working under the supervision of the respondent, a PLS and PE, failed to provide right of entry notice when they entered his property to conduct a survey of the adjacent property. On September 8, 2008, Board staff issued a Notice of Intent to Assess the respondent a \$1,000 Civil Penalty for violating ORS 672.047. In an informal conference with the LEC on October 10, 2008, the respondent submitted new evidence showing that property developer acted as the respondent's agent when he contacted the property owner and mother of the complainant to inform her among other things that survey crews would be coming to the property. The respondent also stated during the informal conference that he was the project manager and not the project survey manager. He denied supervision and control of the surveying. The LEC expressed concern that investigators requested that the respondent provide all relevant evidence during the investigation including the email, but the respondent failed to produce the email. The LEC also was concerned that the respondent was the project manager, but denied knowledge of who was in responsible charge of the survey. **The LEC recommended closing the case by sending the respondent a letter of concern regarding registrants providing proper notice of right of entry and for failing to cooperate with Board investigators as required under OAR 820-020-0015(8).**

2478

The complainant hired the respondent, a PLS, to stake two adjacent lots in Culver, OR. The respondent completed the project. Approximately a year later, the complainant sold one lot and it was found that the respondent had made a 19-foot mistake in staking a property corner. The complainant stated that the respondent had agreed to correct the mistake and to pay the cost for a lot line adjustment. However, the respondent has not corrected the mistake or filed the paperwork. The respondent has been unresponsive to investigator inquiries. The LEC found that the respondent was negligent or incompetent in land surveying and determined to issue him a Notice of Intent to Assess a \$2,000 Civil Penalty for violating OAR 820-020-0025(1) and OAR 820-020-0015(8). Staff issued the respondent the NOI, but he has been unresponsive to board inquiries. Upon further consideration, the LEC directed staff to issue an Amended Notice of Intent to also revoke the respondent's professional land surveying registration.

2479

The OSBEELS received an anonymous complaint alleging that the respondent engaged in the unlicensed practice of engineering when he signed a report to the Oregon Department of Environmental Quality as "Supervising Engineer." His Web site also identified him as a "Supervising Engineer." When notified that using the title and performing engineering without registration are in violation, the respondent and his firm removed the designation and references to engineering. However, the firm was sold and the new firm reposted the references. The LEC determined to issue the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for violating ORS 672.045(2). The LEC also directed investigators to open a law enforcement case against the new firm for violation of OAR 820-010-0720.

2493

The respondent is a licensed architect. City of Portland staff filed a complaint against the respondent for obliterating engineering seals on structural calculations that the respondent then sealed and submitted using his architect seal. After discussing questions of competency and his

use of the structural calculations, the LEC resolved to refer the case for review to the Oregon Board of Architect Examiners (OBAE). The OSBEELS closed the case as pending action by another jurisdiction on March 11, 2008. The OBAE communicated to the OSBEELS on November 14, 2008, that they assessed the respondent a civil penalty for using the calculations and for “misconduct, fraud, deceit, and unacceptable work standards.” In their communication, the OBAE also asked questions about standard drawings and calculations. The LEC reviewed a draft response and offered edits. **The LEC recommended to not reopen the case and to respond with the edited version of the letter.**

2503

On October 23, 2006, the respondent, a SE, submitted a signed renewal form certifying that he had completed the required Professional Development hours (PDH). The respondent was randomly chosen to submit PDH documentation as part of an audit performed on December 17, 2007. In response, the respondent stated he was retired and requested exempt status. The investigation revealed that the respondent was a non-resident engineer and subject to an outdated rule allowing him to comply with the PDH requirements of his resident state. The LEC recommended contacting the respondent regarding documentation of his resident engineering registration during the subject audit period. The respondent responded with the proper information noting that his state did not require PDH units during the audit period. **The LEC recommended closing the case as allegations unfounded.**

2504

On July 3, 2007, the respondent, a PE, submitting a signed renewal form certifying that he had completed the required Professional Development hours (PDH). The respondent was randomly chosen to submit PDH documentation as part of an audit performed on December 17, 2007. In response, the respondent stated he had made a mistake and requested exempt status. When contacted to provide documentation, he responded by requesting that the Board suspend his registration until he had completed the required PDH. The LEC directed staff to issue a Notice of Intent to Suspend Registration (NOI). The NOI was issued, but the respondent waived his right to a hearing and entered into a Settlement Agreement with the Board. The LEC held a special meeting by teleconference on February 24, 2009, to discuss the signed settlement agreement. **The LEC recommended that the Board approve the settlement agreement.**

2513

The respondent, a retired PE, contacted the Board about reactivating his retired professional engineer registration. In response to a Board inquiry, the respondent identified 26 clients for whom he had performed engineering services. The LEC found that the respondent engaged in the practice of engineering while in retirement and staff issued the respondent a Notice of Intent to Assess a \$1,000 Civil Penalty for violating ORS 672.020 and OAR 820-010-0520(2). In response to the NOI, the respondent submitted a letter with a \$1,000 check to reinstate his registration. However, in a subsequent conference call with the respondent it was explained that the check was payment of his civil penalty and that the payment waived his right to a hearing. The civil penalty could not be used to reinstate his registration. The amount of the reinstatement, if he is approved for reinstatement, would be determined at a later date. The respondent accepted these terms. The LEC also recommended not renewing the respondent’s registration. **The LEC**

recommended that the Board approve the Default Final Order and discuss not restoring the respondent's professional registration.

2540

The respondent is a construction contractor who used a handheld GPS unit to conduct an "unofficial survey" of a Marion County property. The respondent is not registered with the Board, but invoiced his client \$2,000 and an adjoining neighbor \$2,400 for his work. Later, the adjoining property owner hired a PLS to complete a survey of his property. The PLS found that the respondent was in error by 11 feet on a common boundary. The LEC determined that the respondent had engaged in the unlicensed practice of land surveying and staff issued the respondent a Notice of Intent to Assess a \$2,000 Civil Penalty on January 5, 2009, for violating the ORS 672.025(1). However, the respondent has not responded to request a hearing. **The LEC recommended that the Board approve the respondent's Default Final Order.**

New Business

Investigator memorandum: preliminary evaluation of complaint

The Board received a complaint regarding a PLS. The complainant alleged that the PLS was hired to complete a boundary survey, but had not set monuments. The preliminary investigation showed that the PLS was informed by his field crew that monuments had been set, when they had not been set. The investigation also found that the complainant would not allow the PLS to return to the property to set the monument, so he was not charged for the work. The PLS was not required to file a map of survey. The LEC determined that the allegations were unfounded and to not open a law enforcement case.

Investigator memorandum: preliminary evaluation of complaint

The Board received a complaint that alleged the respondent violated the rules for final documents when they secured a set of permitted plans from the county to complete as-built for a bonding company. The preliminary investigation found that the respondent and her firm stepped away from the project when the complainant complained. The county will resolve the issue. The LEC determined that the allegations were unfounded and to not open a law enforcement case.

Request for Qualifications: Assistant Attorney General review of RFQ for professional reviewers

Recently, an approved professional reviewer and expert witness filed an unemployment claim at the conclusion of their review of a law enforcement case. As a result, the Assistant Attorney General (AAG) asked for a review of the Board's Request for Qualifications (RFQ) to determine if there was any RFQ language that created an employer - employee relationship. The AAG review showed that the RFQ clearly stated that a reviewer is an independent contractor. However, there were other suggestions from the AAG to strengthen the RFQ. The LEC directed staff to complete the modifications for the published RFQ.

Investigator memorandum: preliminary evaluation of complaint

The Board received a complaint regarding a PE. The complainant alleged that the PE falsified documentation for a land use application. The preliminary investigation found that the PE prepared a report stating the utility service for a single-family residence "will run generally alongside and be adjacent to the existing driveway." He also documented that "the proposed

development will not adversely affect the flood carrying capacity of the floodplain.” However, the PE did not prepare the land use application. The evidence the complainant provided was insufficient to show that the PE was deficient in his analyses of flood plain impacts. The LEC determined that the evidence was insufficient, it involved an exempt structure, and to not open a law enforcement case.

Unfinished Business

Update on 2332

Board investigator Wilkinson informed the LEC that the respondent, a PE and PLS, has not submitted plans to the Douglas County Building Department for review since 2003. The County’s records also showed that the respondent had not submitted plans to the City of Roseburg since 2007. The building permits in question from the complainant, dated in 2005 and 2006, were completed by other engineers. As a result, no recent engineering projects were available for review. However, Wilkinson reported that he spoke with Douglas County Surveyor Romey Ware who informed him that the respondent has submitted recent maps of surveys and is practicing land surveying. The LEC determined to issue a letter of inquiry to the respondent asking him to inform the LEC of the current status of his engineering work. The LEC will review his response as the basis to reach a recommendation on this particular law enforcement case.

Expert Witness Applicant

The LEC discussed the professional reviewer application of a PE and SE, and found that his qualifications and application met the requirements of the professional reviewer program. **The LEC recommended approving the PE/SE as an expert reviewer.**

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 2:31 p.m.