



# Oregon

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STATE BOARD OF EXAMINERS  
FOR ENGINEERING &  
LAND SURVEYING

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## LAW ENFORCEMENT COMMITTEE

Minutes of Meeting  
August 13, 2015

### Members present:

Bill Boyd, Chair  
Jason Kent  
Dave Van Dyke  
Chris Aldridge (alternate)

### Members absent:

Ron Singh (excused)

### Staff present:

Mari Lopez, Board Administrator  
Jenn Gilbert, Administrative Assistant  
James R. (JR) Wilkinson, Investigator

### Others present:

Katharine Lozano, Assistant Attorney General  
Tim Kent (observer)

The meeting of the Law Enforcement Committee was called to order at 8:00 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

### **Public Comment**

There was no public comment.

### **Reconsideration of a Prior Settlement Agreement**

#### 2291 – Dale Marx

Dale Marx submitted a request to reinstate his professional land surveyor registration. As a result of case #2291 on January 9, 2007, his registration was suspended for three months during which he was required to take New Mexico State University (NMSU) course SUR 402 – Ethics and Professionalism in Surveying. The suspension would terminate upon submitting proof of successful completion. However, his registration has remained suspended because he has not completed the course. Due to his delay, the course specified in the #2291 agreement is no longer offered. As a result, Marx could not comply with the original terms of the agreement, so he inquired about substituting another course, including NMSU course SUR 401 -- Ethics and Professional Surveying and Mapping. He asked the Board to accept equivalency thereby changing the terms of the original agreement.

After introductions, Chair Boyd reminded Marx that the Board sent him a letter regarding reconsideration of his settlement agreement on July 14, 2015. The Board declined equivalency, but offered new terms opening a pathway towards reinstatement, including 1) completing the NMSU course SUR 401; 2) paying the appropriate fees, including reinstatement fees and all biennial renewal fees from the date his suspension commenced to the date of reinstatement; 3) obtaining continuing education credits at the rate of 15 Professional Development Hour (PDH) units for each year of his suspension, or a prorated portion thereof – the NMSU course SUR 401 and PDH obtained before the renegotiated settlement is fully executed will not be accepted as qualifying PDH units; 4) payment of the outstanding \$1,000 civil penalty due in case #2425; and, 5) passing the OSBEELS take-at-home examination. To reinstate, the Board proposed Marx would be required to complete these requirements within one year of signing a new settlement agreement. Finally, Marx would be subject to the original requirement for a one-year peer review period after reinstatement.

Marx clarified that the on-line ethics course, which does not have a course number, was the course he proposed as equivalent. He wanted Board approval for the substitution. AAG Lozano commented that Marx had requested a modification of the original settlement terms, which the Board declined to accept, but the Board had made a counter-offer, proposing new terms outlined in the July letter. From the Board's perspective, reinstatement in this case is not about simply replacing one course with another in a settlement agreement, but about the reinstatement of professional licensure eight years after the fact. Upon further discussion, the committee agreed to substitute the on-line ethics course for the SUR 401 with the other terms remaining as outlined.

Marx accepted the substitution. However, Boyd observed that acceptance also would include accepting payment of fees. Marx wondered why he has to pay biennial renewal fees and obtain PDH units when he was not practicing. He added it's been a tough eight years between his health and the recession. He thought the fees and PDH requirements were too onerous and outside the bounds of his original agreement.

What would happen if Marx had he been inactive, asked Boyd. Lopez replied that after five years his registration file would have been purged. In order to reinstate, barring licensure in another state for a comity application, Marx would have to apply to take the examination. By virtue of his suspension, he bypassed the five-year cut-off and has the unique opportunity to reinstate. She pointed out that if not for that fact he would have to go through the whole licensing procedure again. Marx disagreed by noting his original agreement terms – he was suspended until he completed the course and be subjected to peer review for one year. Boyd agreed that he was suspended for three months, but that was over eight years ago.

Kent asked Marx what was more burdensome, accepting the new terms or taking the examination. Marx stated he took the fundamentals and professional examinations on the same weekend. He didn't want to do that again. Then he asked why the renewal fees and PDH requirements. Lopez stated that Board rules require these for reinstatement of licensure from inactive or retired status, which were outlined in the letter he received. Marx replied that he was neither inactive nor retired. AAG Lozano asked Marx why it should be easier for him to

reinstate, who violated statute and rule, than it is for someone who did not violate statute and rule? Marx was satisfied with that response. Kent reminded Marx that he did not comply with the original agreement. The Board's counter offer was not punitive, but given the situation it represented a reasonable and lawful process to reinstate without examination. Had he not been suspended, Marx would have to examine.

AAG Lozano summarized that the LEC would modify the agreement to accept the on-line ethics course. Marx would agree to the other terms as outlined in the letter, including the one year peer review period. Marx accepted, but asked if the term requiring him to complete the take-home examination could be deleted. AAG Lozano and Lopez noted for the committee that, under the new temporary and permanent proposed rules that would be discussed and potentially adopted the following day, the take home examination will no longer be used. The Committee agreed that the requirement of the take-home exam could be dropped from the agreement.

Marx then explained his plans for the peer review. Once he is near to completing the ethics course he will submit the name of the reviewer for Board consideration. AAG Lozano reminded him that, under the original terms and the proposed new terms, his reinstatement is conditional, conditioned on that year of peer-review. Kent wanted to include specifics in a new agreement, such as the date that Marx is to provide the Board with the name of the reviewer. The members asked Marx to identify the reviewer within 50 days of the informal conference, which would allow him time to find an appropriate reviewer before the agreement and identity of the reviewer are presented to the full board.

Wilkinson reiterated that PDH units are required along with taking the ethics course. Marx did not understand why the ethics course would not count towards his PDH units. Lopez informed Marx that reinstatement from inactive and retired status requires completing the PDH units; however, Marx agreed to the ethics course under the #2291 settlement. The on-line ethics course is disciplinary action under the #2291 requirement. The PDH units are separate and for reinstatement of licensure, which is required of every registrant who wants to reactivate their registration.

Furthermore, the committee clarified that the July 14, 2015, letter included a restriction about completing PDH units before the renegotiated settlement is fully executed. Given the discussions, they felt it was appropriate for him to begin his continuing education as soon as possible and were lifting the restriction. They added that Marx was not being treated differently. By his own acknowledgement, Marx had not been practicing in any jurisdiction during the past 8 and half years, AAG Lozano emphasized. The Board views the PDH requirement as a means to ensure registrants demonstrate a minimal level of competency before reinstatement. Boyd reminded Marx that he was under discipline, and should not have a better deal than someone who was not under discipline. Based on the discussion, **it was moved and seconded (Aldridge/Boyd) to recommend that the Board sign a revised settlement agreement. The motion passed unanimously.** The settlement agreement will be drafted for the parties to review while Marx finalizes his peer reviewer. It will be presented for Board consideration and signature once that name is given. He thanked the members for their time and felt satisfied with the outcome.

After conclusion of reconsidering the Marx settlement agreement, public observer Tim Kent, PLS, asked if the Board has an agreement with NMSU on the course. Lopez replied that the Board and other states have used NMSU courses in enforcement cases. At the time of the Marx agreement, Oregon did not have any surveying ethics courses. Tim Kent then provided public comment to the LEC, informing the committee that he is teaching a winter term ethics course at Clark College. He is using a text by Dennis Mouland, *Ethics for the Professional Surveyor: A Collection of Thoughts*, who is also teaching at the University of Wyoming. Tim Kent said his course is one-credit, but the Mouland course is available on-line. Lopez added that Mouland spoke at last year's OSBEELS Symposium. The LEC thanked him for his comment.

### **Cases Subject to OAR 820-010-0617**

#### 2836 – Adapt Engineering

Daniel Harris Watkins, PE, claimed that Adapt Engineering was producing geotechnical reports and performing civil engineering through its Oregon office without having a manager, officer, partner, or employee registered to practice in the disciplines of civil and geotechnical engineering, in violation of OAR 820-010-0720(1). Watkins stated that, at the time of his compliant, geotechnical reports were prepared by Matthew Steffan, then an EIT, and sent for stamping to Jeanne Niemer (PE, GE).

The LEC discussed interpretations of OAR 820-010-0720, Advertising for or Offering to Perform Services without Employing a Licensee or Certificate Holder; Engineering, Land Surveying and Photogrammetry Offices.<sup>1</sup> The LEC found that other Oregon rules regarding labor law, in particular the definition of “full time,” do not apply to licensing issues. Chair Boyd suggested that the question of defining what it means should be referred to the Rules & Regulations Committee. AAG Lozano commented that the Board should reach consensus on the minimum number of hours required under the Board’s rule. Chair Boyd added that it would be difficult because there are small engineering projects that require only 10 hours per week.

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<sup>1</sup> OAR 820-010-0720, Advertising for or Offering to Perform Services without Employing a Licensee or Certificate Holder; Engineering, Land Surveying and Photogrammetry Offices:

- (1) A licensee or firm, partnership, corporation, limited liability company, joint stock company, or other organization shall not advertise for or offer to perform or perform professional services for which a license or certificate is required unless the licensee or organization has a full-time partner, manager, officer or employee licensed and certified to practice in the discipline for which a license is required or certificate to practice in accordance with Oregon Revised Statute Chapter 537.
- (2) Licensees and organizations shall not advertise for or offer to perform or perform professional services for which a license is required but for which they do not hold, or have a qualified person who holds, a license and thereafter seek to employ persons who hold a qualifying license.
- (3) As used in this rule, a “full-time partner, manager, officer or employee” refers to a person who:
  - (a) Is physically present at least one half of the person’s working time in the offices of the licensee or organization during normal business hours unless the full-time partner’s, manager’s, officer’s or employee’s professional duties require that the person be elsewhere; and
  - (b) Is not working for the licensee or organization under a contract or as a consultant for specific projects.
- (4) A licensee or person employing or having a licensee as its partner, manager, or officer, may operate a project office for which no licensed professional engineer, land surveyor or photogrammetrist is physically present at least one half of the person’s working time, provided that the project office qualifies under this section and that no services are advertised or offered making reference to or in connection with the project office, its address or phone number. For purposes of this section, a project office is a workstation for a specific project, the use of which will not extend beyond the scope or duration of the specific project.

Kent reflected that the definition is tough to enforce given project offices. This case presents an unusual situation where a person is employed part time for the City of Portland and part time for Adapt Engineering. AAG Lozano stated that professionals who are salaried do not use a time sheet unless there are billable hours. She suggested the LEC can either rest on the investigation regarding the two-years of unlicensed practice or conduct further investigation of Neimer. The members determined to focus on the two years when the business relationship between Adapt Engineering and Neimer was not compliant with OAR 820-010-0720.

Kent suggested writing a letter of concern regarding OAR 820-010-0720 and issuing a penalty for two years of unlicensed practice. Chair Boyd was concerned about getting too restrictive on the interpretation because of the wide variety of working arrangements. People are balancing work and family. He questioned if the Board was restricting that balance. AAG Lozano observed that Boyd's point is the reason to ask for Board discussion because of the diversity of opinions and potential options. **It was moved and seconded (Kent/Boyd) to refer OAR 820-010-0720 and the phrase "full-time partner, manager, officer or employee," with case history, for discussion to the Board. The motion passed unanimously.**

The members then discussed civil penalty factors. However, Lopez observed that the LEC had already reached a decision at its meeting on April 9, 2015. She reminded them that the case was paused to get more information from Neimer. There has been no change to the core violation. **It was moved and seconded (Kent/Boyd) to affirm the April 9<sup>th</sup> penalty and to issue a letter of concern regarding Neimer's compliance with OAR 820-010-0720.**

Van Dyke was concerned that the proposed \$1,000 civil penalty was too lenient for a two year violation, especially given other levied penalties. AAG Lozano replied that the LEC looked at the violations as a single violation committed over a period of time, but each project done during that time period also could be evaluated separately. Chair Boyd supported assessing a civil penalty for each of the four known projects during the two-year period. However, Kent would not accept the friendly amendment, so Chair Boyd called for a vote. **The motion failed; Boyd, Aldridge, Van Dyke opposed.**

**It was moved and seconded (Boyd/Van Dyke) to assess a \$1,000 per project for a total of \$4,000.** Kent thought it was arbitrary because the rule was not clear. The motion also was not consistent with the earlier decision. Boyd stated he was persuaded by the penalties assessed in other less egregious situations (e.g., address change). Kent replied that the \$1,000 was appropriate in this case. Wilkinson clarified there is usually some reason behind the determination in a case like an address change, yet it's rare to assess that much. He added that an address change is sometimes the cause of a law enforcement case because they get in compliance once contact is made, for example, in a continuing education investigation. **The motion passed; Kent opposed. It was moved and seconded (Kent/Boyd) to send a letter of concern to Adapt Engineering informing them of requirements of OAR 820-010-0720. The motion passed unanimously.**

2879 – Andrea Laliberte

While OSBEELS staffs were researching symposium topics and presenters, potential presenter Andrea Laliberte was considered and her firm's Web site for Earthmetrics was reviewed. Laliberte was not a registered photogrammetrist, but appeared to be offering photogrammetric services via her website. The Board consulted with two registered photogrammetrists. AAG Lozano stated that Aldridge would not be able to vote on the case since he acted as one of the professional reviewers.

Boyd noted that the allegation was offering photogrammetric services without registration. Her defense was the delineation of natural resources. Aldridge described her work as remote sensing for determining land cover class as opposed to authoritative decisions or precision measurements. She gathers and analyzes information regarding land cover. He explained there are a variety of remote sensing tools, including photogrammetry and Lidar, but her work does not fall under the category of professional photogrammetry. Boyd asked whether someone taking photographs of agricultural lands and determining, for example, the percentage of wheat production. That is not professional photogrammetry, replied Aldridge. Her work is more robust in the types of data she uses; however, she is not determining authoritative locations.

In response to a question about determining elevations, for example, Aldridge commented that it becomes less clear because she discussed terrain modeling. Not all terrain modeling is equal. Google Earth is an example. If a person represents a model as being accurate to a certain degree then they have stepped over the line into authoritative measurement. Aldridge did not believe Laliberte was doing that because her terrain model is for understanding the shape of the earth under the land cover. His opinion was there was minimal risk to the public. Boyd commented that he has seen evaluations of aerial photographs for a pile of coal one day then, sometime later, another series of photographs were evaluated to determine how much coal had been used or added. Aldridge stated that work is the practice of photogrammetry because it's a volume computation and authoritative measurement. Aldridge observed that Laliberte was not doing that type of work.

**A motion (Boyd/Van Dyke) was made to issue Laliberte a letter of concern about wording on her Web site, which may raise concerns about violations.** Kent did not support the motion because she had made efforts to comply and invited comments. He requested that the members identify what specific language raised concerns. Upon review, the phrase "terrain extraction for airborne imagery" was identified. Aldridge commented that anyone who needs photogrammetric services would recognize that what she is offering was not photogrammetry. He added that the phrase "terrain extraction" is problematic. Nevertheless, Aldridge observed that her Web site is an on-line résumé. Kent reiterated Aldridge's comment that there is little risk to the public.

AAG Lozano pointed out that letters of concern are not formal disciplinary actions, but are teaching tools. She added a letter of concern is there in the event they fail to correct. It shows history. Boyd expressed concern with "terrain extraction" because her level of accuracy does not rise to the level of the professional practice of photogrammetry. Aldridge suggested modifying the language to state, "resource level terrain extraction." **The motion passed; Kent opposed.**

2906 – Darren Weigart

Dale L. Hult, PLS, CWRE, alleged that Kelli A. Grover, PE, Firwood Design Group LLC, created a boundary survey map that was incomplete, lacked an official seal, and, in the performance of the survey, provided no right of entry notice to the Pentecostal Church of God, the neighboring land owner. Upon investigation, Darren Weigart, PLS, was found as a former Firwood Design Group employee who performed the survey.

Boyd observed that Weigart should have stamped the map preliminary. He also noted that the survey crew was not under Weigart's supervision and control. Kent asked for clarification. He thought a right-of-entry violation and a stamping violation had occurred. Lopez explained that another case has been opened against Grover for her part in distributing an unsigned map. However, the Grover case regarding advertising for land surveying services without employing a land surveyor was recently closed. The Weigart case has come back because of the discovery that Grover was in supervision and control of the survey crew, not Weigart.

The LEC then discussed the right-of-entry violation.<sup>2</sup> AAG Lozano stated that the statute grants professional land surveyors (PLS), or any employee or agent of the land surveyor, the right to enter property. Field crew members weren't employed by Weigart, nor were they under his

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<sup>2</sup> ORS 672.047, Right of entry by land surveyor; compensation for damages caused; notice; removal of survey markers. (1) Subject to subsection (4) of this section, **a registered professional land surveyor, or any employee or agent of the land surveyor**, may enter on foot, where practicable, upon any land for the purpose of surveying or performing any survey work and may establish permanent survey monuments as allowed by rule of the State Board of Examiners for Engineering and Land Surveying.

(2) Any person exercising the right of entry granted under subsection (1) of this section shall do so with no unnecessary damage to the land entered upon. Damages to trees, shrubs and other vegetation intentionally caused by the land surveyor shall be subject to compensation and penalties as provided in ORS 105.810. The land surveyor shall compensate the landowner for all other actual monetary damages, or \$100, whichever is greater. Actual monetary damages may include but are not limited to all costs in time, labor and materials incurred by the landowner to return the property to the condition it was in prior to the damage.

(3) If land that is entered and surveyed under this section is located outside of an urban growth boundary and the landowner makes a timely request in writing, the registered professional land surveyor shall provide a copy of the survey in a timely manner to the landowner.

(4) **A registered professional land surveyor, or any employee or agent of the land surveyor**, may not enter upon land for the purpose of surveying, performing other survey work or establishing a permanent survey monument without first providing notice to the landowner by first class mail or by personal notice. If the land is occupied by a person other than the landowner, notice must also be given to the occupant by first class mail or by personal notice. Notice that is given by first class mail must be mailed at least seven days prior to the entry onto the land. Notice that is given by personal notice must be hand-delivered to the landowner or occupant or be posted in a conspicuous place where the landowner or occupant may reasonably be expected to see the notice. The notice shall give the professional land surveyor's name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers to be left on the land.

(5) **A registered professional land surveyor, or any employee or agent of the land surveyor**, who enters land as allowed under this section is owed no greater duty of care than that owed by a landowner to a trespasser.

(6) Notwithstanding the provisions of subsection (1) of this section, **a registered professional land surveyor, or any employee or agent of the land surveyor**, may use a vehicle to enter upon land provided that the vehicle remains on existing roadways where practicable.

(7) The land surveyor shall remove all flagging, stakes and other temporary materials that are above ground if leaving the materials in place creates an unreasonable risk of harm to persons or property. Except for forestland as defined in ORS 527.620, the land surveyor shall remove all temporary above ground materials within 60 days of placement unless written authorization to leave the materials in place is received from the landowner or occupant.

control, but they were employed by Grover and under her control. The field crew members were both employees and agents of the engineer/engineering company. Grover is a professional engineer and not a land surveyor. A PLS can enter the property without permission, but a field crew operating under the direction of a PE cannot. So, in this case, the field crew members were both employees and agents of an engineer, not a land surveyor. It doesn't matter whether Weigart was an employee and a PLS because the field crew was operating under Grover's PE registration. The employees and agents of a PLS can enter property without permission; the employees and agents of a PE cannot.

Boyd questioned the scenario. A professional engineer employs a PLS and a survey crew, but the field crew would not have the right to enter. AAG Lozano clarified that a PLS can enter land by posting notice per the statute, as can their employees and agents. However, that is not true with an engineering firm. Under the statute (see bold text in footnote 2), only the PLS and their employees and agents have right of entry. Van Dyke asked what if he employed a PLS with the authority to direct field crews. They are not employed by the PLS, replied AAG Lozano. It would depend on the business model – if under the model, for example, the crew members were agents of the PLS, acting for the PLS, following the PLS's direction, then they would be allowed to enter the property without permission. However, in this case, Grover employed and directed the field crew. They were not under Weigart's control. Weigart was not even aware of the field crew actions; they were agents of Grover here, not Weigart.

Boyd commented that this matter should go to the Board for full discussion. Registrants may not realize that a PLS working for a non-PLS may or may not have the right-of-entry authority. AAG Lozano observed that the law was written in such a way that it restricts entry. If the agent or employee fails to provide notice, then they can be held personally responsible. The PLS would always have a right to enter, as long as he or she complied with the other provisions of the statute. It is the PE and crew members, depending upon the business model, who might not enjoy the right of entry. Additionally, the requirement applies to all three categories, e.g., PLS, agent, or employee. AAG Lozano continued that it will depend on the organization of the firm. It is the person who enters the land that will be held accountable. In this case, Grover employed and directed the field crew.

Kent expressed concern about the Board meddling in organizations and their structure. He wanted to know whether the surveyor dictated the terms of surveying, which would show who was in responsible charge. Van Dyke agreed stating it's not the business structure, but the issue of responsible charge and the work done under that authority. The claim to enter property is under the PLS license and their supervision and control. Boyd added that is common practice. In most instances, the PLS has some authority in the process whether by signing time sheets or by affixing their seal and signature to surveys.

In regards to this particular survey, Wilkinson explained that an unfinished lot was planned for development. The field crew was sent to gather topography and other data necessary for the engineering aspects of the project. He then illustrated the relative positions of the boundary and fence and pointed out that no entry occurred because of the unknown boundary location in relation to the fence. Since the field crew had no knowledge where the boundary was located,

they only tied the fence and did not cross it to search for monuments of record. Afterwards, Weigart plotted the surveyed fence location and calculated the boundary line. Only the map showed the boundary. AAG Lozano noted that engineers can survey within their licensure, as can their employees and agents, but there is no right-of-entry associated with their work. Kent commented that he wanted to drop the right-of-entry allegation. The LEC members concurred.

Boyd returned to the question of failing to mark a survey map preliminary, which is important because a document can find its way into the public's hands. Kent believed the issue was on Grover and not on Weigart. Grover distributed the map after Weigart left Firwood. He added it was in the project file and wasn't ready to go out. Van Dyke then described his work flow. He will print drawings for review and not affix his stamp until they are complete adding that had Weigart distributed the map it would be a different matter. Kent clarified that the map was an internal document for the project file. In practice, stamping every project document "draft" is not what happens in the real world. AAG Lozano reminded the LEC that the Final Document rule can be changed to clarify and to add "project file" or "internal documents," but not for this particular case unless the rule is modified and applied retroactively.

**A motion was made to forward OAR 820-010-0621 to the Rules and Regulations Committee, in particular subparagraph 2 (Kent/Van Dyke).** Kent commented that the rule is impractical for engineering. AAG Lozano asked what type of rule change, specifically, Kent would suggest for a more practical application to end the registrant's responsibility once the document leaves the registrant's control. Kent replied that he meant when the document becomes deliverable. She pointed out that those terms hold different meanings. Kent stated the rule does not cover the range of possibilities for the status of documents. Van Dyke suggested sending it to the full Board for discussion. Kent accepted the friendly amendment as did Van Dyke. **The motion passed unanimously.**

Returning to Weigart, AAG Lozano summarized that he violated the current rule, but the committee was reluctant to sanction him because of the circumstances under the rule. She then suggested that any rule that is modified can be applied retroactively. If the Final Documents rule was clarified, which could guide resolution of this case, the LEC could reevaluate the case based on the revised rule. Lopez commented that an interpretation of OAR 820-010-0621 can be found in the Building Officials Manual and has been discussed by the PPC.

Kent agreed there was a violation, but thought a letter of reprimand was warranted. Van Dyke argued that had Weigart stayed at the company the document might not have been released. It was a hard copy in a project file for internal use. Kent stated that Weigart could have stamped it "draft." Grover was culpable because someone took over the project and handed the map out after Weigart left. **Motion was made (Boyd/Kent) to send a letter of concern to Weigart regarding failure to mark a map preliminary. The motion passed unanimously.**

## 2908 – Paul Scott

Shelly Marie Clark Duquette, SE, City of Portland, Bureau of Development Services, alleged that plans submitted for permitting by Paul Scott, PE, were sealed with a structural engineering seal, but Scott was not registered as a structural engineer. However, the exhibit plan set was not for a significant structure and therefore did not require a structural engineer. AAG Lozano commented that there cannot be a title violation for the use of “structural” engineer, but a lack of truthfulness and a seal violation.

Kent highlighted that each time Scott stamped a plan sheet with the wrong seal it was untruthful. He added that Scott self-reported 17 plans sets with an additional six plan sets found upon further investigation. He then observed that Scott had not complied with the seal requirements under OAR 820-020-0025 and was untruthful. Kent also was concerned that Scott did not uncover all the instances where he had used the wrong seal. He felt this was uncooperative.

Boyd commented that the seal violation is wrapped-up in the untruthful statements. It was a course of conduct. In a criminal case, the untruthful statements would be paramount to the seal violations and likely charged as one violation. AAG Lozano observed that is a policy issue. Members have gone both ways by combining or separating the acts. Kent suggested a \$500 civil penalty for the seal violation and \$500 for making untruthful statements. AAG Lozano asked about the civil penalty factors. He replied that the seal violation is a big deal when he was falsely representing himself as a structural engineer.

While Scott explained it as a simple staff mistake, Boyd noted that the untruthful statements are strengthened by the repeated nature of conduct. He expressed difficulty understanding how someone can forget their licensure restrictions. If affixing the wrong seal was inadvertent, it was gross. He then asked if Scott had corrected the seal. Wilkinson informed that Scott submitted a copy of his revised seal last fall and apologized for the oversight. In addition, Scott is a multi-state registrant who also holds a structural engineer registration in California, but not in Oregon.

Boyd also asked if Scott applied for registration. AAG Lozano agreed emphasizing that Scott made reference to applying. If he has applied then it points to his credibility. Upon consulting Board records, Scott had not. AAG Lozano then noted that a civil engineer can practice structural engineering, but not on significant structures. None of the structures were significant. **A motion was made (Kent/Boyd) to assess a \$500 civil penalty for the seal violation and \$500 for making untruthful statements.** Kent encouraged comment because it was his starting point. At the beginning of discussions, Van Dyke considered each plan set as separate acts. However, he would agree to the penalty due to Scott’s qualifications as a structural engineer in other states and no public harm was done. He added that Scott lacked attention to detail, so the penalty should get his attention. Furthermore, Scott was performing within his registration and was technically qualified. He saw no need for further sanction. Boyd stated all of the rules are aimed at protecting public safety, and more so with those rules dealing with structural engineering.

The members were still concerned about a lack of cooperation. AAG Lozano noticed that Scott had informed the Board that more plans had been stamped than he originally believed. He also self-reported violations, which tends to support cooperation. Wilkinson informed the LEC that Scott through his secretary was requesting copies of plans submitted to building departments in an effort to uncover all of the plans with the wrong seal. In essence, they are filing public records requests to get their own plans because they no longer had copies. As a result, Wilkinson was receiving email discussions regarding the release of permitted plan sets. Aldridge commented that they went above and beyond.

Kent clarified that his concern about cooperation had diminished, so he would amend his motion to remove lack of cooperation. He proposed a \$500 penalty for incorrect seal violations under OAR 820-010-0620. No untruthful statements. Boyd accepted the amendment. Van Dyke offered that it was too light for the length of time and the number of documents that were sealed. **He offered a \$1,000 amendment, which Kent and Boyd accepted.** Kent observed that this was one of the worst seal violations that had come along. While inadvertent, it is hard to believe that some check was not made to verify licensure status. Van Dyke commented that the \$1,000 is closer to assessing a penalty for each violation rather than viewing the violation in aggregate. The violation itself was not flagrant, but the length of time and number of documents made it different. He thought the Board was being too generous. Had Scott practiced on a significant structure, it would be a different conversation. **The motion passed unanimously.**

#### 2921 – Greg Logan

An anonymous complainant was received under the cover of a Red Lion Hotel scratch pad and the written comment, “not registered w/Oregon Board of ...civil engineers/PLS.” The person provided Douglas County Park Advisory Board meeting minutes, a print of Logan’s LinkedIn page, and a job announcement for a Douglas County Parks Project Manager. Logan purports on his LinkedIn page that he lives in Elkton, OR, lists civil engineering, and refers to his current employment as Douglas County Parks Department, Gregory B. Logan, PLS. He also shows Consulting Land Surveyor, Gregory B. Logan, PLS. Wilkinson informed the LEC that Logan is not registered in Oregon as a professional engineer or professional land surveyor. However, Logan is registered as a PLS in California and Idaho.

AAG Lozano observed that this case presents an interesting LinkedIn question. She reminded them that in prior cases the Board has assessed penalties against someone who has only an Oregon address and uses a professional title without indicating in parentheses their state of registration. There are ways to make clear they are not registered in Oregon. In addition, LinkedIn is not social media, like Facebook, but a professional networking Web site. Indicating his state of registration is easy, (e.g., PLS-CA, PLS-ID). The issue is that he shows Elkton, OR.

Aldridge asked if civil engineering is a department at Douglas County. Wilkinson replied that Logan works in their Parks Department. Kent suggested that civil engineering is a department, but not his duties. AAG Lozano pointed out that the issue is the PLS and Elkton, OR. There is a clear connection between the representation of professional registration and his reported place of residence. Kent then commented that “Consulting Land Surveyor, Gregory B. Logan, PLS” is the name of his business. However, there was no listing of his credentials on the LinkedIn page.

Van Dyke was unsure the LinkedIn violation was viable. He felt it was more of a moniker of achievements. Lopez recalled Logan wrote that his purpose of the LinkedIn posting was his work search prior to Douglas County. Boyd asked how this was different than a business card. Van Dyke said this was less tangible than a business card. Boyd replied that anyone can access LinkedIn, but not one's business cards.

The LEC then reviewed OAR 820-010-0730, Use of Title if Registered in Other Jurisdiction. Van Dyke commented that Logan's current city of residence is listed on the same page as his qualifications. By that coincidence, it becomes a violation. Boyd observed that the rule prohibits a person from "hold themselves out as a land surveyor in Oregon." Was he holding himself out on the LinkedIn page? AAG Lozano read ORS 672.007(2).<sup>3</sup> She then stated that "in any other way" would apply to the LinkedIn page, PLS designation, and Elkton, OR, address. OAR 820-010-0730 softens the ORS 672.007(2) restrictions by allowing an out-of-state registrant to use the title under certain conditions. Boyd agreed that it he violated the statute.

**A motion was made to issue a letter of concern (Van Dyke/Boyd).** Van Dyke felt the nature did not rise to a level warranting a financial sanction. He believed it was a teaching opportunity for everyone who is using LinkedIn. Boyd asked if future respondents using LinkedIn and violating Oregon statute and rule would also receive a letter of concern. Aldridge was skeptical of using LinkedIn as the basis. In this case, Van Dyke replied, Logan's violation was not an intentional misrepresentation, but confusion over a form of media. Lopez stated that staffs are educating people on the rules. AAG Lozano agreed recalling prior efforts to assist people in reaching compliance. Lopez reported that a recent *Oregon Examiner* article discussed the topic.

AAG Lozano suggested the LEC set aside the case and allow further investigation by working with Logan to make corrections to his LinkedIn page. This would be consistent with prior activities and prior final orders. It would be a teaching moment to assist with determining whether a future sanction is warranted. The members could not agree. Kent was uncomfortable with monitoring LinkedIn, which is for networking, and how Logan used it. After a lengthy discussion, Van Dyke clarified that the statute and violation can't be ignored. The letter of concern balances the enforcement priority against grappling with LinkedIn and other social media representations. **The motion passed; Kent opposed.**

Van Dyke expressed concern that the internet explosion has created a situation for people to inadvertently violate statute and rule. While he believed Logan was not holding himself out as a surveyor, but rather posting his credentials, there was still a technical violation that cannot be overlooked. In this particular case, the evidence was gray and did not support the offering. Aldridge agreed and made some suggestions for changing the posting, including adding the state of registration. It is a teaching moment and not an intentional infringement of statute and rule.

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<sup>3</sup> ORS 672.007(2), A person is practicing or offering to practice land surveying if the person: (a) By verbal claim, sign, advertisement, letterhead, card or in any other way implies that the person is or purports to be a land surveyor; (b) Through the use of some other title implies that the person is a land surveyor; or, (c) Purports to be able to perform, or who does perform, any land surveying service or work or any other service that is defined by ORS 672.005 as the practice of land surveying. \* \* \* \*

2922 – Robert Whitaker

Carole Newvine, Noise Program Coordinator, Oregon Department of Transportation (ODOT), submitted a complaint regarding Roger Whitaker, PE. Newvine alleged that Whitaker's engineering registration was delinquent from June 30, 2010 through June 30, 2014, and she provided evidence that Whitaker was engaged in the practice of engineering while delinquent. His lapse in licensure was also presented as evidence in a lawsuit involving ODOT. Upon investigation, Whitaker is a mechanical/acoustical engineer who provided "checked & approved" services to Michael Minor and Associates for ODOT noise studies. However, Whitaker was delinquent for the time period July 1, 2010 through August 15, 2014. He also admitted to not notifying OSBEELS of address change(s).

Boyd observed that Whitaker was delinquent, yet he sealed and signed engineering documents using a falsified expiration date. In addition, Whitaker used a non-compliant seal design. Kent saw four clear violations, including not changing his addresses on multiple occasions. Wilkinson explained that renewal notices are sent as a courtesy, but if a notice is returned to OSBEELS there is no follow-up by changing the address and mailing a reminder. It is the registrant's responsibility to maintain a current address.

Kent suggested a civil penalty for four violations of unlicensed practice and an address change violation. The civil penalty factors were discussed, particularly for practicing four times without a license. The falsification of the renewal date is a big problem too, added Aldridge. It's fraud. Van Dyke agreed stating each instance is an untruthful statement. In regards to unlicensed practice on four occasions, the members found that the acts were serious, repeated, and, in the absence of other indicators, intentional acts. In regards to the address change, the members were unsure how many times Whitaker moved, so a single penalty of \$250 was proposed. Last was the discussion about the four instances of untruthful statements. However, Kent and Boyd expressed concern about whether they were assessing a civil penalty for the same act.

AAG Lozano informed that Whitaker practiced unlicensed engineering, which are separate violations from falsifying his renewal dates. She added that the violations can be viewed as a period of conduct or as discreet instances of individual conduct. Boyd stated that falsifying a seal necessarily involves misrepresentation. AAG Lozano agreed. The unlicensed practices are for preparing the reports whereas affixing false renewal dates are separate acts. Wilkinson added that these reports were for ODOT studies. Whitaker's actions have cast doubt on the studies, the results, and how ODOT managed the projects. Newvine wrote that this had serious implications for their agency, while Whitaker considered this a matter of late payments.

A motion was made by Kent to assess a \$500 civil penalty and a 60-day suspension for four instances of unlicensed practices, a \$500 civil penalty and a 60-day suspension for four instances of untruthful statements, a \$250 civil penalty for failure to submit an address change, and a letter of concern regarding incorrect seal. The total was \$4,250 and a 120-day suspension. The members discussed the Shaun Martin case and found these sanctions were consistent. Van Dyke was unclear about Whitaker's motivation for not renewing. Aldridge agreed adding that Whitaker must have known he had not renewed, yet he engaged in the practices and affixed

falsified seals to four documents. This was serious. However, Van Dyke was not sure about the magnitude of the license discipline.

Kent asked if there was agreement on the license discipline. Van Dyke thought the reasoning behind the discipline was valid. Kent could see the violations as an oversight, but there was also intent. Boyd thought one-month was too light, whereas four months should get his attention. After discussing a case involving Scott Ogren, which did not involve license discipline, the members found there was intent with Whitaker that distinguishes it from Ogren. Taken as a whole, said Van Dyke, the penalties are similar. Nevertheless, a lower suspension period was discussed. **A motion was made (Kent/Boyd) for a one month suspension for the unlicensed practices and a one month suspension for the untruthful statements with the civil penalty of \$4,250 and letter of concern on the seal remaining. The motion passed unanimously.**

#### 2923 – Marcela Alcantar

Wilkinson informed the committee that a case summary was not completed due to time constraints.

#### 2924 – Roland Allmon

Steve Lee, BLM surveyor, contacted the Board office regarding Roland Allmon who had filed survey #04663 in Deschutes County. Lee explained that he was conducting a survey and researching Deschutes County records when he found a survey showing an Allmon signature with the phrase “Oregon License Applied For.” Wilkinson explained that he verified for Lee that no records exist for Allmon and that he also contacted Deschutes County Surveyor, Mike Berry, PLS, who assisted in researching his records.

The investigation found that Allmon affixed his embossed Nebraska PE seal to survey #04663. To verify the total number of surveys, Berry examined his records and found that Allmon filed 32 surveys and subdivision plats during the 1962 and 1963 period. Eight of which had no filing date, including survey #04663. Additional research found that Allmon was born in 1924 and died in 1996. Wilkinson added that Nebraska confirmed Allmon was their registrant from 1955 until 1990. Further review showed Allmon also affixed an imitation of an Oregon PE seal to other surveys using the registration number #4840 and a registration date of May 4, 1962. However, current OSBEELS records do not show #4840 as a valid PE number.

The committee expressed unanimous surprise at this discovery and wondered what could be done given that the surveys and plats were recorded some fifty years ago. While a number of options were discussed, the committee found there was little to be done other than to inform all County Surveyors and to allow them to make a decision on how to handle their own records. In addition, the committee determined to have an article published in the *Oregon Examiner*. **A motion was made (Boyd/Kent) to send a notification letter to County Surveyors. The motion passed unanimously.**

### Preliminary Evaluations

Wilkinson introduced the preliminary evaluations by stating that the LEC was provided documents as submitted by the complainant for their determination on whether or not to open a case.<sup>4</sup> No investigations have occurred. The below list begins with the subject of the complaint followed by the name of the complainant.

#### John Gambatese / Mobile Barriers LLC

Mobile Barriers LLC submitted a complaint against John Gambatese alleging that he represented himself as an Oregon professional engineer when he is not registered as such. Mobile Barriers LLC listed seven examples of unlicensed use of the title, including one where Gambatese is listed as a Civil and Construction Engineering Professor at Oregon State University (OSU) along with the P.E. designation. Gambatese is not registered in Oregon, but is a registered civil engineer in California. **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Gambatese. There was no further discussion.**

#### Bill Grip / Anonymous

An anonymous complainant alleged that Bill Grip was using the title of engineer without registration. The complainant submitted Grip's OSU business card that listed him as a P.E. and provided evidence that Grip is registered in Virginia with a Hawai'i address. **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Grip. There was no further discussion.**

#### Shawn Kampmann / Stuart Osmus

Stuart Osmus, PLS, CWRE, submitted a complaint regarding the surveying activities of Shawn Kampmann, PLS. Osmus recounts that he was asked to bid on a surveying job in Ashland, OR, but upon discussion with the potential client he learned that the matter was resolved "without resorting to surveying." This sparked his interest, so Osmus visited the site. What he eventually found was that Kampmann had set temporary markers as property corners, which Osmus asserted "is neither professional nor legal." **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Kampmann. There was no further discussion.**

#### Donald Knapp / Rebecca Hamilton

Rebecca Hamilton alleged that she observed her neighbors, including Donald Keith Knapp, pull survey monuments and throw them over her fence into a creek. She requested a new survey of her property, which the Board lacks jurisdiction, but her submission included an Oregon Department of Justice Consumer Complaint Form. Wilkinson informed the committee that he contacted the consumer hotline and was informed they had not received a complaint from Hamilton. He forwarded a copy of the Hamilton complaint. Nevertheless, he was unsure if the Board had jurisdiction because the removal or destruction of survey monuments is covered by

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<sup>4</sup> OAR 820-015-0010, Processing Complaints, The Board will process complaints as follows: (1) Anyone may submit a complaint against a licensed or unlicensed person. Complaints must be in writing and include evidence to document all charges; (2) The Board will conduct a preliminary review of the complaint to establish that there is sufficient evidence to justify proceeding and that the allegations against the respondent are such that, if proven, would result in a penalty or sanction. \* \* \* \*

ORS 209.150. However, the Board's jurisdiction in ORS 209 is limited to ORS 209.070(4), ORS 209.130, ORS 209.200, and ORS 209.250(1) through (9). AAG Lozano confirmed that the Board does not have jurisdiction over monument destruction. After a brief discussion, **the Committee reviewed the preliminary evaluation materials and determined to refer the matter to the Lane County Surveyor's Office with a courtesy copy sent to Hamilton.**

David Krumbein / Clyde Hunt

Clyde Hunt submitted a complaint alleging David Krumbein, PE, PLS, CWRE, acting in his capacity as a CWRE, prepared a Certificate of Water Right for Hunt "neighbors" Linda Shafer and Lowell Spiess showing that their point of diversion (POD) was from a pump owned by Hunt. He stated there was no plan to share the pump. The remedy Hunt requested is "not to promote trespass of land and property." Wilkinson informed that Krumbein prepared a POD for Hunt in 1996 and for Shafer and Spiess in 1999. However, both Certificates use the same POD. There's a lack of specifics, but an investigation should reveal what happened. **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Krumbein. There was no further discussion.**

Tom Hamilton / Ralph Meier

Ralph Meier submitted a complaint alleging Tom Hamilton, PLS, issued false statements on a survey that subsequently was filed in Lincoln County as survey #19,798 on October 27, 2014. Hamilton had been hired by Meier neighbor Jerry Ashard to do a property line survey. The filed survey included the statements, "*The Meiers have also made repairs to this fence and accepted the fence line as their west property since 1988 (almost 25 years). Neither party knew the location of the deed line until C.S. 18,947 was filed in May 2012. The old fence line had been accepted by both parties until then.*" However, Meier disputed making these statements. **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Hamilton. There was no further discussion.**

Johnnie Summers / Robert Claus

Robert James Claus submitted a complaint alleging that Johnnie Summers entered his "property and apparently did some work without a written contract." According to Claus, Summers worked with a plumber (and others) to secure permits that were later turned into liens and into court action to take Claus property, money, or portions thereof. Summers became a registered land surveyor on August 22, 1975. However, as a result of case #2094 on September 18, 2002, Summers was revoked for using the title engineer and practicing engineering without a license. **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Summers. There was no further discussion.**

Survey Ethics / Anonymous

The Board received from an anonymous source an article titled, "Dysfunctional" Surveying in Idaho. The article was published in the *US Observer, Promoting Excellence in Investigative Journalism*, Volume 2, Edition 34. Wilkinson explained that the article discussed an Idaho property boundary conflict that began in 1977 when a monument was set by Carl Edwards for his client Walker. The monument was alleged to be "three hundred feet north of its original position." Edwards filed a "corner perpetuation" some 19 years later. He was registered in Oregon as a PE, but has let it lapse more than five years. Walkers hired Chad Erickson, (Idaho

PLS), who deviated from “standard surveying practices.” Subsequently, Walker hired Steve Wellington, PLS, to complete the survey. The article alleged Wellington has done a “180” and is “now required to file a corrected Record of Survey.” However, the anonymous source offered no complaint statements on which to proceed. **The Committee reviewed the preliminary evaluation materials and it was determined to not open an investigation. There was no further discussion.**

#### Morgan Rider / Anonymous

Christine Valentine, Administrator Oregon State Board of Geologist Examiners (OSBGE), forwarded an anonymous voicemail to the Board regarding the use of title by Morgan Rider. In the voicemail, the person referred to two biography listings for Rider wherein Rider was purporting to be a registered professional engineer. This person questioned whether she was registered. Upon review, two biographical posting for Rider were found. One was posted to the Environmental Quality Commission (EQC) Web page and the other to the Oregon Watershed Enhancement Board (OWHB) Web page. The postings are different, yet both refer to Rider as a “professional engineer in the state of Oregon.” Wilkinson informed that Rider became registered as a professional engineer by comity, especially qualified as an environmental engineer, on February 8, 2000. She maintained her registration until December 2008. At that time, she failed to properly renew and has been lapsed for over five years. As a result, her registration file was purged pursuant to Oregon Administrative Rule (OAR) 166-350-0010(17). **The Committee reviewed the preliminary evaluation materials and it was determined to open an investigation on Rider. There was no further discussion.**

#### Contested Case Updates:

AAG Lozano reminded the committee about upcoming hearings, including Jaime Lim, case #2898, on September 15, 2015, and Mitchell James Duryea, case #2903, on September 1, 2015. She added that she was preparing a Motion for Summary Determination for the Duryea case because no material facts were in dispute. If the Motion is granted, then the hearing will be canceled.

**Staff Update:** The Board was granted a Ruling on Motion for Summary Determination in the Duryea case. A Final Order will be presented for consideration at a later date.

#### 2905 – Timothy Wolden

In addition, AAG Lozano announced that a favorable Ruling on Motion for Summary Determination was issued in the matter of Timothy Wolden, PE, case #2905. A copy of the Ruling was reviewed by the committee while she gave a brief overview of the three Wolden cases, including case #2781, #2845, and #2905. The Board found the following in case #2781:

- Respondent was negligent in the practice of engineering, and violated OAR 820-010-0621(2), OAR 820-020-0015(2), and OAR 820-020-0025(1) and (2).
- Respondent performed and certified engineering works not done in compliance with the City of Eugene Fire Marshal's Office Fire Escape Testing and Maintenance Policy 08-08 on eight occasions, and determined that eight fire escapes were structurally safe without performing an approved load test process.
- Respondent was untruthful on eight occasions by sealing and signing documents asserting that he had tested fire escapes and found them to be structurally safe, according

to the approved load test process, when, in fact, he had not tested the fire escapes and determined them to be structurally safe according to the approved load test process.

For these violations, the Board issued a Final Order Incorporating Settlement Agreement that suspended Wolden's professional engineering registration from July 9, 2013 through August 23, 2013, in lieu of revocation, and assessed a \$16,000 penalty. The Board stayed \$8,000 of the civil penalty for five years as long as Wolden did not commit other violations of Oregon's engineering laws or rules during that period.

Subsequently, the Board received information that Wolden had practiced engineering during his suspension period. After the investigation, the Board issued a Final Order Incorporating Settlement Agreement in case #2845, which again suspended Wolden's registration from July 8, 2014 through January 4, 2015, in lieu of revocation. The Board also enforced the suspended \$8,000 civil penalty and assessed an additional \$2,000 civil penalty for the new violations. The Final Order also required Wolden to provide the Board with a list of his then-current engineering projects and a written declaration identifying the professional engineer(s) who would be in "responsible charge" of those ongoing projects during his suspension. Last, Wolden was prohibited from accepting any new engineering work during the period his registration was suspended, regardless of whether that work would be exempt from registration for a non-registrant. Wolden provided a list of his ongoing projects and the corresponding professional engineers. He claimed these were the only jobs that were not entirely complete.

After the start of Wolden's second suspension period, the Board received information that Wolden had engaged in engineering practices on at least three occasions. Because there were no material facts in dispute, AAG Lozano filed a Motion for Summary Determination. The Ruling was issued, so AAG Lozano highlighted the Administrative Law Judge's (ALJ) conclusion that Wolden "engaged in the practice of engineering while his registration was suspended, in violation of ORS 672.045(1) and OAR 820-010-0520." The ALJ also found that Wolden failed to previously report the three engineering projects to the Board as current or ongoing projects with identified professional engineers in responsible charge. The ALJ agreed with the proposed \$6,000 civil penalty assessing a \$1,000 for each instance of unlicensed practice and failing to report the projects. The ALJ also agreed with the proposed revocation of Wolden's professional engineer registration. After a lengthy discussion about the cases and the Ruling, **the Committee determined to recommend that the Board approve a Final Order consistent with the ALJ Ruling. There was no further discussion.**

### **Case Status Reports**

The committee offered no comments on the Case Status report.

### **Collections**

Kent asked about the status of collections. Lopez informed that the Board in May approved entering into contracts with outside collection agencies. However, there has been no opportunity to finalize plans.

The meeting adjourned at 1:47 p.m.