



Oregon

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

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting

June 13, 2013

Members Present:

Sue Newstetter, Chair

Ken Hoffine

Tom Van Liew

Dan Linscheid

Staff Present:

Mari Lopez, Executive Secretary

Jenn Gilbert, Executive Assistant

Jason Abrams

Joy Pariente

Monika Peterson

James R. (JR) Wilkinson

Others Present:

Joanna Tucker-Davis, Assistant Attorney General

Richard Smith, PE

A meeting of the Law Enforcement Committee was called to order at 8 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. Dan Linscheid was present as a temporary member of this Committee.

Informal Conference

2721 – Steven Toyama

Mr. Toyama was contacted by the Committee by telephone for his informal conference. Mr. Toyama explained that he did send his requested PDH documentation via USPS to the Board within the time limit, but it never arrived. Mr. Toyama referenced a receipt for mailing that shows a package mailed to OSBEELS on October 10, 2011 and arriving in Indiana on November 1, 2012. Committee members pointed out that Mr. Toyama's extension to submit documentation was until April 2011, which means the documents allegedly sent based on that receipt would be late. Mr. Toyama said he can't be held accountable for USPS errors. Ms. Newstetter said this situation isn't about the USPS, but about failure to respond and issues with CPD record keeping on Mr. Toyama's part.

Mr. Hoffine asked for clarification on Mr. Toyama's case. The case summary references PDH paperwork that Mr. Toyama said he sent to OSBEELS. However, it later says that Mr. Toyama found the paperwork in February 2013, which he thought he sent, but which was never received

by OSBEELS. Mr. Hoffine wanted to know if Mr. Toyama meant he found the original paperwork he thought had been sent or if he had sent a copy of the original paperwork to OSBEELS and he recently found the originals from which an additional copy could be sent to OSBEELS to take the place of the copy which didn't make it to the OSBEELS office. It was clarified that the originals were found by Mr. Toyama, but he didn't indicate if he thought he had sent these specific documents or if he thought he sent copies of these documents. Ms. Newstetter also pointed out that the package supposedly containing these documents which never arrived at OSBEELS had been sent to Indiana, according to the package's delivery confirmation number, and this is the state where he was when his father passed away.

Mr. Toyama did not dispute the penalty contained in the NOI and accepted the \$500 civil penalty. The Committee recommends the Board approve issuing a Default Final Order.

2734 – Gary D. Wicks

Prior to the informal conference, Ms. Newstetter asked why he was only being sanctioned under his land surveying license instead of under his engineering license also. Mr. Hoffine was wondering the same thing because if he didn't have enough professional development hours to be compliant for his land surveying license renewal, then, it would be logical to assume, he also didn't have enough PDHs to be compliant for his engineering license renewal. Ms. Lopez reminded the Committee members that the Board removed prorated PDH requirements for each license if dual licensed. Therefore, there is no place in rule to sanction multiple disciplines. AAG Tucker-Davis said these situations should be addressed on a case-by-case basis.

Mr. Wicks was contacted by the Committee by telephone for his informal conference. Mr. Wicks explained that he responded by certified mail on May 18, 2011 and his packet was received and signed for by an "O'Neill." When he was again contacted by Staff to submit the requested PDH documentation, Mr. Wicks said he ignored the request because he knew his documentation had already been received. He said he didn't hear from Staff again until he heard from the Regulation Department about a law enforcement case being opened against him, as his license was renewed for the next biennium with no indication that there was any issue with his audit or registration. On December 13, 2013, Mr. Wicks emailed his CPD Organizational Form and supporting documentation for 6 PDHs to investigators. Mr. Wicks said he wasn't contacted again by Staff until April 2013.

Ms. Newstetter brought up the fact that Mr. Wicks claimed primarily self-study to fulfill his PDH requirements. According to OAR 820-010-0635, only 6 hours of self-study may be claimed each biennial renewal period. Mr. Wicks said he wasn't familiar with the self-study limitations. Mr. Hoffine asked Mr. Wicks why it took so long for him to respond. Mr. Wicks said it wasn't intentional – he simply put the notifications to the side and had forgotten about them. Mr. Linscheid pointed out that failure to complete CPDs is a serious situation and asked Mr. Wicks what he felt was an equitable sanction. Mr. Wick's said he did not agree with the Committee's perception of the offense with regard to its seriousness or the allegation regarding his record keeping practices. After discussion, the Committee recommends the Board approve a \$1,000 civil penalty for violations of OAR 820-010-0635(1) & (5) and OAR 820-020-0015(8).

Staff Update: Mr. Wick's did not agree with the wording of the proposed settlement agreement. It will be discussed again at the August Committee meeting.

2719 – Richard Smith

Mr. Smith appeared at his informal conference in person. Mr. Smith admitted to not updating his address with the Board. After the forwarding time for his mail ended, Mr. Smith said he did not receive any documents from the Board. He said if he had received the letters, he would have quickly responded to them. Once he was aware of Staff's attempts to contact him, Mr. Smith quickly complied. The Committee determined that, due to eventual compliance, the main issue in Mr. Smith's case is failure to update his address with the Board. Based on this information, the Committee recommends the Board approve a \$250 civil penalty for a violation of OAR 820-010-0605(1).

2737 – Ali Momeni

Mr. Momeni appeared at his informal conference in person. He said he should have retired his license a long time ago and requested the Board allow him to permanently retire it in lieu of other sanctions. Mr. Momeni explained that, once he retired, he didn't think about professional development. While he was employed, his PDHs were satisfied by attending conferences and events as part of his job. He said it was unintentional neglect of the rule due to not looking into the rules deeply enough. Mr. Momeni also explained that he kept his Oregon registration current only because he thought it was required since he used his Oregon registration to obtain reciprocity in Washington. After discussion, the Committee recommends the Board approve a \$500 civil penalty and permanent retirement for violations of OAR 820-010-0635(1) & (5) and OAR 820-020-0015(7).

2731 – R. Bryce Stapley

Mr. Stapley was contacted by the Committee by telephone for his informal conference. He said he was in the middle of retiring and hadn't practiced in Oregon in some time. He told Staff he didn't have the supporting documentation and requested retirement in May 2011. He said he didn't hear back from Staff and assumed the situation was resolved. When the documents were requested again by investigators, Mr. Stapley said he asked his former employer if they had kept record of his PDHs. Unfortunately, there were no records prior to 2007 and the emails he had saved on his company computer had been deleted. Mr. Stapley said he provided the Board with as much documentation as possible, but he was aware it wasn't enough. After discussion, the Committee recommends the Board approve a \$500 civil penalty and permanent retirement for violations of OAR 820-010-0635(1) & (5) and OAR 820-020-0015(8).

2813 – DL Design Group, Inc.

DL Design Group, Inc. was unable to secure legal representation in time for appearance at this informal conference. AAG Tucker-Davis mentioned, regarding the case against DL Design Group, Inc., that while the initial request for hearing can be made by a representative for the corporation, however, it must be ratified by an attorney within 28 days. Since DL Design Group, Inc. requested a hearing on May 16, June 14 was the 28th day. While this information is contained in the language of the Notice of Intent, AAG Tucker-Davis and Staff took a moment to give DL Design Group, Inc. a courtesy call and email regarding the required ratification.

2781 – Timothy Wolden

Mr. Wolden appeared at his informal conference in person, accompanied by his attorney, David A. Rhoten. Mr. Wolden read from a prepared statement. He admitted that it was his failing in keeping up with city requirements which caused this situation. He said he never intended to

jeopardize anyone's safety or allow for compromised structural integrity of any fire escape he inspected. He said he is committed to more care and diligence in reading through professional literature that may affect his engineering work. After discussion, the Committee recommends the Board approve an \$8,000 civil penalty and a 45-day suspension with an additional \$8,000 abated for five years. The terms of the abatement require Mr. Wolden to avoid all sanctions against his license for five years.

2718 – Doug Roberts

Mr. Roberts appeared at his informal conference in person. He said he was busy with a large project as the owner's representative for a major civic center and police station while simultaneously trying to wind down his career in project management. He said his PDH records were maintained by his employer, but he couldn't access those records after retiring and couldn't recreate them. He requested the Board grant him a retroactive retirement to December 31, 2010, which would make the PDH issues null and void. After discussion, the Committee recommends the Board approve a \$500 civil penalty and permanent retirement for violations of OAR 820-010-0635(1) & (5) and OAR 820-020-0015(8).

Committee Meeting

2722 – Robert L. Graham/OSBEELS

On July 16, 2011, the Board received information that Graham was given the title of Professional Land Surveyor for a project document dated May 25, 2011, for "Camille Park," which was implemented by the Tualatin Hills Park and Recreation District. Through conversation with staff at Otak, Inc. (Graham's employer), it was determined that Otak staff had inadvertently given Graham the PLS title when drafting the cover for the project bid documents. It does not appear that Graham had knowledge of the use of the PLS title until contacted by the Board. The Committee determined to close the case as compliance met.

2736 - Mark E. Fordham/OSBEELS

Fordham is a non-Oregon registrant. Fordham was selected to participate in an audit of his PDH units for the renewal period of January 1, 2008 through December 31, 2009.

Fordham responded to the audit request, with a request for retirement status. The E&Q determined the file should be transferred to the Regulation Department for further review. Fordham did not respond to the initial letter from the Regulation Department on November 3, 2011, however he responded on April 17, 2013, after the case became active. Fordham stated he is not able to provide verification of his continuing education because he discarded it after he retired in May, 2011. Fordham stated he had retired suddenly in 2011, because his wife's health was failing and she died on December 23, 2011. Fordham has made a request to the LEC to permanently retire his registration in lieu of disciplinary action. As a result of this discussion, the Committee determined to issue a Notice of Intent (NOI) to assess a civil penalty of \$2,000 and a 90-day suspension for violations of OAR 820-010-0635(1) & (5) and OAR 820-020-0015(7).

2738 – Frederick J. Proffitt/OSBEELS

Mr. Proffitt is a non-resident Oregon registrant. Mr. Proffitt was selected to participate in an audit of his PDH units for the renewal period of January 1, 2009 through December 31, 2010. Mr. Proffitt responded to the audit by submitting the CPD Organizational Form, but did not

provide supporting documentation for the PDH that he claimed for the audit period. Mr. Proffitt had relied on an OSBEELS newsletter from the year 2000, which provided information on how to document PDH, which was no longer valid information. The E&Q reviewed the response and transferred the file to the Regulation Department where Mr. Proffitt was made aware of his responsibilities. Mr. Proffitt found and submitted the appropriate documentation for 42 PDH and compliance was met. As a result of this discussion, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-010-0635(1).

2739 – George W. Voss/OSBEELS

Mr. Voss was selected to participate in an audit of his PDH units for the renewal period of July 1, 2008 through June 30, 2010. Although Mr. Voss initially responded to Board correspondence, he failed to complete the CPD Organizational form and provide supporting documentation as requested by the Account Specialist. Mr. Voss stated he discarded all documentation after he retired and was not able to recreate his records. As a result of this discussion, the Committee determined to issue a NOI to assess a civil penalty of \$2,000 and a 90-day suspension for violations of OAR 820-010-0635(1) & (5) and OAR 820-020-0015(7).

2741 – Ross A. Winters/OSBEELS

Mr. Winters was selected to participate in an audit of his PDH units for the renewal period of July 1, 2008 through June 30, 2010. Mr. Winters failed to respond to several attempts by the Board to gain his compliance with the audit request. Mr. Winters did not provide documentation of the PDH he claimed for the audit period with the exception of travel receipts. Mr. Winters did not provide these travel receipts until after the deadline he was given by the Regulation Department and investigators were not able to confirm his attendance by contacting Agilent Technologies. As a result of this discussion, the Committee determined to issue a NOI to assess a civil penalty of \$3,000 and a 90-day suspension for violations of OAR 820-010-0635(1) & (5), OAR 820-020-0015(7) and OAR 820-020-0015(8).

2746 – Kristin Ming/OSBEELS

The advertisement for Ming Consultants, LLC was found on BizFind under the Engineering Services category. Ms. Ming stated that this was unauthorized advertising for which they had no knowledge. Ming Consultants, LLC has not been operating since 2010. BizFind appears to be very similar to a number of websites (i.e. Manta, Superpages, dexknows) that offer information on local businesses unsolicited. Ms. Newstetter said this website seems to be a data mining operation. As a result of this discussion, the Committee determined to close the case as allegations unfounded.

2753 – Cole R. Elliott/OSBEELS

Mr. Elliott was selected to participate in an audit of his PDH units for the renewal period of January 1, 2008 through December 31, 2009. Mr. Elliott failed to respond to numerous attempts by the Accounts Specialists to contact him and gain his compliance with the audit request. On January 12, 2012, Mr. Elliott submitted incomplete and inappropriately documented PDH materials. Only after several attempts were made by investigators did Mr. Elliott finally submit adequate documentation proving his compliance with the PDH requirements for the audit period. Staff initially had a difficult time locating Mr. Elliott, as he had not updated his address with the Board. As a result of this discussion, the Committee determined to issue a NOI to assess a civil

penalty of \$750 for violations of OAR 820-010-0605(1), OAR 820-010-0635(5), and OAR 820-020-0015(8).

2755 – Jimmy W. Hillstrom/OSBEELS

Mr. Hillstrom submitted a CPD form claiming he received 35 PDH units during the audit period, with 29 of these units taking place within one 24 hour period, and failed to submit any supporting documentation to support this claim. Staff discovered through the Social Security Death Master File that Mr. Hillstrom died on December 18, 2012. As a result of this discussion, the Committee determined to close the case, as the respondent is deceased.

2829 – Jack Watson/OSBEELS

Ms. Newstetter recused herself from this discussion. In 1996, Watson conducted survey #1430 for clients T.G. Brown and Izee Ranch. His map of survey shows 17 PLSS monuments of which Watson placed 14 as part of his survey. Some ten-years later, the BLM experienced unpermitted timber harvest in an area where Watson surveyed. The BLM prepared an encroachment report on June 19, 2008, that was provided to the Board.

The BLM conducted a dependent resurvey of their affected lands in June 2010. A final map of survey #1932 was filed with the Grant County Surveyor on August 19, 2011. The BLM accepted one of Watson's monuments, but found another 100.85' distant and a second 156.70' distant. They also found the S1/4 corners of Sections 7 and Section 8. With this original evidence, they were able to reestablish the original survey lines around the BLM tract. Watson accepts that the monuments he set were erroneously positioned and that they do not represent the true corner positions. As a result, the LEC should issue a Notice of Intent.

Mr. Linscheid said that Mr. Watson should have known when he looked at the distance that the measurements weren't correct. Mr. Wilkinson pointed out that it seems like Mr. Watson made no comparisons with topography calls or previous survey information. He also said the map of survey was narrated with no explanation of survey evidence or procedures. Mr. Hoffine said surveyors used to measure only half way, but their notes would say they went all the way through. He said this could explain the discrepancy in bearing, but not the issue with the corners. Mr. Van Liew asked what the potential damage is by making a surveying error like this. Mr. Hoffine pointed out that the additional acreage was misallocated. Mr. Abrams said this led to timber being harvested which was supposed to be protected.

Mr. Hoffine said the quarter corner issues are an instance of incompetence because he didn't check any previous maps for information. AAG Tucker-Davis explained that negligence is determined as someone making mistakes that no reasonable land surveyor would make. Incompetence indicates that an individual is not capable of performing the basic duties required of a land surveyor. As a result of this discussion, the Committee determined to issue a NOI to assess a \$3,000 civil penalty and a revocation for violations of ORS 209.200, ORS 209.250 (1), and OAR 820-020-0250(1) & (2).

The Committee requested an AAG opinion on the application of ORS 209.070(4) to a private surveyor. The Committee also recommended a preliminary evaluation on Carl Stout, PLS. Stout submitted a sealed and signed statement regarding efforts to find and set the two section corners. Watson listed Stout on his survey; however, he only listed Dave Bondsteel on the Corner Monumentation forms.

Staff Update: It was determined that Mr. Watson's case will be discussed during the August Committee meeting with AAG Lozano present.

New Business

CH2M Hill Settlement Agreement

Board member James Doane, PE/PLS, sent Board staff an email with a press release titled “CH2M Hill Hanford Group, Inc. Admit Criminal Conduct, Parent Company Agrees to Cooperate in Ongoing Investigation and Pay \$18.5 Million to Resolve Civil and Criminal Allegations.” The press release references federal criminal violations by defrauding the public by engaging in time card fraud. Investigators contacted Tyler H.L. Tornabene, the Assistant United States Attorney for the Eastern District of Washington. He provided investigators the list of individuals who have already entered into plea agreements regarding these charges. None of these individuals are Oregon registrants. Investigators also checked the 10 individuals who are pending grand jury indictments. None of those individuals are Oregon registrants either. Finally, investigators checked the names on the Final Executed Settlement Agreement – none of those individuals are registrants. The Committee determined to not open a case on this matter.

Thomas R. Hamilton, PLS

An anonymous complaint was received alleging that Mr. Hamilton was barred from the Lincoln County Courthouse during his employment as the Lincoln County Surveyor, due to inappropriate behavior. Investigators noted that there were no criminal conviction associated with these actions, therefore, ORS 670.280 does not apply. In addition, the Rules of Professional Conduct do not apply as the alleged violations are regarding County personnel rules and do not involve any individuals other than Mr. Hamilton. The actions which led to Mr. Hamilton being barred from the Lincoln County Courthouse were confirmed by the Lincoln County General Counsel as not being related to Mr. Hamilton’s professional work as a land surveyor. The Committee determined to not open a case on this matter.

Propertylinemaps.com

Board member Susan Newstetter, PLS, sent an email regarding www.propertylinemaps.com, which appears to offer land surveying services without licensure. The website advertises helping individuals “find property lines and find property corners by producing the most accurate GPS coordinate possible without hiring a surveyor.” The site asks for information including GPS coordinates, Google map location, legal description of property, and/or previous surveys. There are a number of other sites offering similar services. The Committee determined to not open a case on this matter as the sites are offering data compilation services, rather than surveying services.

Vish K. Ponnathpore

Matt Bryan, Registration Specialist, received a professional engineer comity application from Mr. Ponnathpore. Upon review, Mr. Bryan found that Mr. Ponnathpore and his firm, PM Greene Engineers, had been disciplined by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors for unlicensed practice of engineering and for practicing engineering without a Certificate of Authorization (COA). The Disciplinary Activity report showed that Mr. Ponnathpore received a \$500 civil penalty and reprimand for unlicensed practice. However, the Oklahoma board shows no formal discipline by the board. After discussion, the Committee determined the need for more information regarding this matter and clarification on Mr. Ponnathpore’s history of disciplinary action.

Staff Update - Investigators contacted the Oklahoma Board, which acknowledged that they had made a mistake in recording Mr. Ponnathpore's disciplinary action. Mr. Ponnathpore was sanctioned for unlicensed engineering and the Oklahoma Board said they will be updating their records to reflect this.

James A. Tyvand, PE (Statement of Qualifications)

A review of Mr. Tyvand's statement of qualifications for approval as a professional reviewer was forwarded to the July Board meeting for discussion with the full Board. During the March 2013 Board meeting, OAR 820-001-0025 was adopted that requires the Board to comply with the public contracting statutes; new process to Staff. Some of the special provisions for engineering and land surveying contracts include lower threshold amounts for Direct Appointment and Informal Selection Procedure, required compensation negotiation, and some exemptions from public records law.

Unfinished Business

Case Disposition

As a result of the April 11, 2013 LEC meeting, NOIs were issued to 9 respondents. Seven of the respondents elected to meet with the LEC in an informal conference on June 13, 2013, one did not contest the NOI and paid the proposed penalty, and one did not respond.

The following cases are ready for Board approval of the Consent Calendar:

Options Form, Default Final Orders

2717 – David Paul Nicoli – NOI uncontested and civil penalty paid in full

Default Final Orders

2712 – John Raymond Gery – Failure to respond

LEC Update

2726 – David Gowers and 2725 – James Rodine – Both cases were referred to Oregon State Board of Geologist Examiners (OSBGE) for consideration at the next meeting of the Joint Compliance Committee (JCC).

Request for Qualifications (RFQ) for Professional Reviewers

As AAG Lozano was not present to discuss her findings, the RFQ review was forwarded to the August Committee meeting.

Attorney General Updates

2601 – Rick Franklin Corporation (RFC) (Hearing June 7, 2013)

The Board will discuss this case during the July 2013 Board meeting.

2618 – Martinez, OAH referral (Hearing July 23, 2013)

Motion for summary determination was denied.

2778 – Knight, OAH referral (Hearing June 25, 2013)

There was no further discussion.

Case Status Report

The LEC offered no comments on total cases open (109), cases subject to collections (10), or on cases subject to monitoring (13).

The meeting adjourned at 3:17 p.m.