



# Oregon

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

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## LAW ENFORCEMENT COMMITTEE

Minutes of Meeting

August 8, 2013

### Members Present:

Sue Newstetter, Chair

Steven Burger

Ken Hoffine

### Staff Present:

Mari Lopez, Executive Secretary

Jenn Gilbert, Executive Assistant

Jason Abrams

Joy Pariente

Monika Peterson

James R. (JR) Wilkinson

### Others Present:

Katharine Lozano, Assistant Attorney General

Maria Cahill (Respondent)

Joe Hill (Respondent)

Anne Hillyer (Observer)

Douglas Knight (Respondent)

Martin Hansen (Mr. Knight's legal representation)

Ross Winters (Respondent)

A meeting of the Law Enforcement Committee was called to order at 8:11 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

### Committee Meeting

#### 2728 – Maria Cahill/OSLAB

This case was addressed earlier in the agenda because Ms. Cahill was present to discuss the allegations against her. The Oregon State Landscape Architect Board (OSLAB) originally received a complaint against Ms. Cahill alleging the unlicensed practice of landscape architecture. OSLAB had closed their complaint with a letter of concern, due to lack of sufficient evidence. However, during the course of that investigation, OSLAB discovered information that indicated potentially unlicensed practice of engineering. OSLAB submitted a complaint to OSBEELS regarding Ms. Cahill and “Green Girl Land Development Solutions” alleging unlicensed practice of engineering.

OSBEELS opened a complaint and Ms. Cahill responded that she provides design guidance as a sustainability consulting business, however, there is no plan finalization, signing, or stamping services that are offered. Ms. Cahill discloses on her website that she is not licensed and her services do not replace that of a registered civil engineer. In addition, project documents and correspondence submitted by Ms. Cahill verify that she has worked under the supervision of John Howorth, PE.

Ms. Newstetter believed that the issue at hand was Mr. Howorth not stamping plans and the City of Portland not sufficiently enforcing Oregon Administrative Rule (OAR) 820-010-0621. Mr. Burger noted that the City of Portland is subject to OARs, but is not responsible for enforcing them. The Committee agreed that Ms. Cahill quickly responded to the Board and made it clear on her website that she was not a registered professional, therefore, compliance is met.

However, the Committee determined to open a case against Mr. Howorth for violations of OAR 820-010-0621 and Oregon Revised Statute (ORS) 672.020(2) for not stamping final documents for Ms. Cahill's projects that he claimed supervision over.

### **Informal Conference**

#### **2739 – George W. Voss**

Mr. Voss participated in his informal conference via telephone. He was selected to participate in an audit of his PDH units for the renewal period of July 1, 2008 through June 30, 2010.

Although he initially responded to Board correspondence, he failed to complete the CPD Organizational Form and provide supporting documentation, as requested. Mr. Voss said he had always kept paper copies of all his course participation information at his office and he maintained a Word document with descriptions of all the classes. When he left his employer, he wasn't provided with his paper-copy files, however, he had the Word document. He said when he was audited, Staff wouldn't accept his Word document as proof of attendance. He said, after that discussion, he didn't receive any correspondence from the Board until his 2012 renewal information arrived. He didn't plan on renewing his license, as he was retired, so he didn't submit his renewal to the Board. Mr. Voss said when he was contacted regarding this case, he was told a roster with his Word document would be accepted, but he had since deleted the Word document and had no way to access the rosters, which were left with his employer. The Committee proposed a \$250 civil penalty and permanent retirement with no option of reinstatement. Mr. Voss was opposed to the civil penalty because he didn't see how any harm or damage was done by his actions, as he never used his stamp on any work. Ms. Newstetter explained that the civil penalty was for failing to maintain his personal records. Despite some mitigating circumstances, it is still the registrant's responsibility to keep their personal records for five years. The Committee recommends the Board approve a \$250 civil penalty and permanent retirement without reinstatement for violations of OAR 820-010-0635(1) and (5).

#### **2741 – Ross A. Winters**

Mr. Winters appeared in person for his informal conference. He was selected to participate in an audit of his PDH units for the renewal period of July 1, 2008 through June 30, 2010. He 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 PDHs he claimed for the audit period, with the exception of travel receipts. He did not provide the travel receipts until after the deadline given by the Regulation Department. The Regulation Department was also unable to confirm his attendance through Agilent Technologies, which administered the training.

Mr. Winters said it was true that he hadn't been able to maintain his PDHs, however, he said he declared 0 PDHs on his renewal form and on subsequent audit forms. He did this to avoid submitting a false document to the Board. His initial renewal form could not be located by Staff. He said he later submitted a Continuing Professional Development Form claiming 38 PDHs. Mr. Winters said he didn't submit these initially because he wasn't sure if this training was relevant to professional engineering. He described the training to the Committee as a seminar on new equipment. Ms. Newstetter asked Mr. Winters why he was allowing his license to remain delinquent and what he was currently doing to ensure PDH compliance. Mr. Winters said his job doesn't require him to maintain his PE and he was planning on letting the license expire. The Committee proposed two options to Mr. Winters: (1) a 90-day suspension and the opportunity to make up his delinquent PDHS or (2) a \$250 civil penalty and permanent retirement without reinstatement. Mr. Winters said option 2 was the most practical, as he's never had to use his PE registration in his workplace. The Committee recommends the Board approve a \$250 civil penalty and permanent retirement without reinstatement for violations of OAR 820-010-0635(1) and (5) and OAR 820-020-0015(7).

#### 2777 – Joe P. Hill

Mr. Hill appeared in person for his informal conference. Mr. Hill's case was discussed, in detail, during the June 2013 Committee meeting. Mr. Hill said he was floored when he received the notice of the allegations against him because "incompetence" and "negligence" does not describe the person he is; the allegation of not taking public safety into consideration is very insulting.

Mr. Hill explained that this job put him in a difficult situation because there was a lot of money and attention riding on the event. When he did the first drawing, Mr. Hill said he wasn't provided soil condition, site conditions or wrap information from the client and the client wanted the drawings right away to start the permitting process. He said the accusation that he didn't make proper calculations are unfounded because he wasn't given all the information necessary for those calculations. Mr. Hill said he's worked on a number of projects with the City of Eugene and the University of Oregon and has never had any issues in the past.

When issues arose regarding the structures, Mr. Hill said he flew in from Texas and met with his client, U of O personnel and City of Eugene personnel. He said the builders were constructing structures which didn't match his designs. Mr. Hill sketched new designs on-site to implement necessary changes. Additionally, there were two structures (he had only designed one) and neither one were built the same or even mirror images of each other or according to the designs Mr. Hill had provided. There were also issues with anchoring the structures because U of O wouldn't allow any invasive asphalt methods of anchoring and he had to do the best with what he was allowed. Finally, tent loads, which were assessed in the second set of drawings from Mr. Hill, were removed and then added again later. He said he informed the client from the beginning that internal support posts would be overstressed with the tents and the structure could fail.

Regarding permitting, Mr. Hill said ADA ramps were never considered or engineered, but were included on the permit from the City of Eugene. He said, in the past, the permitting process has started with preliminary drawings and there has never been an issue. He also said that final calculations were completed, but he was informed the permit had already been issued and further documentation from their office wasn't necessary.

Mr. Hill said, in hindsight, he never would have taken the project if he would have known the plans would be rushed. Mr. Hoffine said it seemed like Mr. Hill was trying to pass the blame on a number of issues that were ultimately his. Mr. Hill responded that he wasn't passing blame, but rather, noting that the short time period given for calculations and designs was a significant issue – especially without all necessary information being included by the clients. Mr. Burger asked if Mr. Hill routinely drafts designs without a site visit. Mr. Hill said clients don't usually want to pay for a site visit by his firm, so they provide the data to him. The Committee discussed the applicability of OAR 820-010-0621(2) because the ultimate issue in this situation was improper marking of final documents. Mr. Hill said the City of Eugene wouldn't proceed in the permitting process if the documents were marked as "preliminary." The Committee proposed a \$500 penalty for a violation of OAR 820-010-0621(2). Mr. Hill said he didn't want to pay a fine for something he wasn't responsible for. He said he followed the same procedure with the City of Eugene in the past with no issues. He insinuated that an argument with City of Eugene personnel combined with the high-pressure and high-visibility of this event created the issue, not his engineering. Mr. Hoffine asked if Mr. Hill would be more comfortable with surrendering his license in lieu of a fine. Mr. Hill declined this as well, stating that he felt like he was the victim in this situation and shouldn't be penalized. Ms. Newstetter gave Mr. Hill the option to take time and consider the proposals and reconvene with the Committee members and Staff via teleconference to make a final decision. Mr. Hill said he would review the settlement agreement containing the \$500 civil penalty, but he wouldn't agree to anything without the time to read and review the agreement. The Committee recommends the Board approve a \$500 civil penalty for a violation of OAR 820-010-0621(2).

**Staff Update:** Mr. Hill notified the Board on September 6, 2013, that he agreed to terms of the settlement agreement.

#### 2778 – Douglas G. Knight

Mr. Knight and his attorney appeared in person for his informal conference. Mr. Knight had requested another appearance before the Committee in an attempt to remedy the situation before appearing before an Administrative Law Judge. Mr. Knight's attorney said his client understands and has had time to reflect on the situation. Mr. Knight said this situation reflects a low point in his life and something he never expected to happen to him. He said he's always tried his best to avoid any actions which would call his reputation into question. He acknowledged that it is his responsibility to keep up with changes to OSBEELS rules and statutes and properly complete all official documentation. Ms. Newstetter asked Mr. Knight what he would suggest as a penalty. Mr. Knight's attorney said they would accept a fine and would prefer no suspension. He said the goal, as he and his client see it, is to right the wrong and ensure this will never happen again. To support that, Mr. Knight provided proof of more than 60 PDHs completed since this case was opened. AAG Lozano asked Mr. Knight how he is working to insure this doesn't happen again. Mr. Knight said he has completed professional development courses and that the issue of untruthfulness would never happen again.

The Committee proposed a \$2,000 civil penalty and a 90-day suspension due to the Staff time and effort spent on this case. The Committee acknowledged that Mr. Knight's good-faith effort at PDHs and behavior change regarding his admission of guilt and error countered the option of revocation. The Committee, Mr. Knight and his attorney agreed on the settlement agreement language, which will state that the Board finds that Mr. Knight violated OAR 820-020-0025, but Mr. Knight denies that finding.

Following discussion with Mr. Knight and his attorney, the Committee recommends a \$2,000 civil penalty and 90-day suspension for violations of ORS 672.200(4) and OAR 820-020-0025.

**Staff Update:** Mr. Knight's attorney has submitted comments regarding the settlement agreement. The matter will be discussed during the September 2013 Board meeting.

#### 2753 – Cole Elliott

Mr. Elliott participated in his informal conference via telephone. Mr. Elliott was selected to participate in an audit of his PDHs for the renewal period of January 1, 2008 through December 31, 2009. He failed to respond to numerous attempts by the auditors to contact him and gain his compliance with the audit. Eventually, he submitted incomplete and inappropriately documented PDH materials. After several attempts made by investigators, Mr. Elliott submitted adequate documentation proving his compliance.

Mr. Elliott said that he had tried to come into compliance a number of times, but his emails and letters weren't acknowledged by Staff. He indicated that he has proof of his correspondence with the Accounts Department. He also said that the change of address violation is inapplicable because his home address has always remained the same and the expired address in his record is that of a former employer.

The Committee requested Mr. Elliott provide the email traffic between himself and the Accounts Department regarding his audit. Additionally, the Committee wanted to review copies of all the correspondence regarding the audit sent to Mr. Elliott, which Mr. Elliott said contained the incorrect audit dates that led, in part, to his noncompliance.

**Staff Update:** Mr. Elliott submitted email traffic between himself and the Accounts Department on August 8, 2013. The case will be readdressed at the October 2013 Committee meeting.

#### 2736 – Mark Fordham

Mr. Fordham participated in his informal conference via telephone. Mr. Fordham was selected to participate in an audit of his PDHs for the renewal period of January 1, 2008 through December 31, 2009. He responded to the audit request with a request for retired status. The Examinations and Qualifications Committee determined the file should be transferred to the Regulation Department for further review. Mr. Fordham did not respond to the initial letter from the Regulation Department on November 3, 2011. When his case became active on April 17, 2013, Mr. Fordham responded, stating he was not able to provide verification of his continuing education because he discarded it after he retired in May 2011. He said he had retired suddenly in 2011 because his wife's health was failing and she died on December 23, 2011. He requested the Committee consider permanent retirement of his registration without reinstatement in lieu of a civil penalty. Due to extenuating circumstances, the Committee recommends the Board approve permanent retirement without reinstatement for Mr. Fordham.

### **Committee Meeting**

#### 2723 – J. Duncan Campbell Jr./OSBEELS

The Board received a complaint on June 10, 2011 regarding the recruitment by the Campbell Group, LLC for a "Forest Engineer," without the requirement that the person hired for this position would be registered in Oregon as a professional engineer. Position duties indicated the possible practice of engineering. The company argued that their corporation met the exemptions found under ORS 672.060(5) and (6), however, the organization was reluctant to divulge detailed

information in order to discern if this argument was valid. Through discussion with the Management Director of Operations, it became apparent that the “Forest Engineer” was more of a project manager and the company contracted with third parties for engineering services or used in-house engineers. The Campbell Group, LLC submitted a revised position description that changed the job title to “Forester” and the revised summary of duties did not indicate that this position’s responsibility included the practice of engineering.

Mr. Hoffine explained that some companies will use similar phrases to seek individuals with education and experience in forest engineering, as opposed to forest management or forest operations. After discussion, the Committee recommends the Board close the case as “compliance met.”

#### 2742 – Philip Martinson/DOJ

Ms. Newstetter disclosed a previous business relationship with one of the engineering firms involved in the case referenced below. Mr. Burger disclosed that he had worked with Mr. Martinson in the past. Ms. Newstetter said she felt she could still be impartial in regards to Mr. Martinson’s case. Mr. Burger recused himself from discussion.

Mr. Martinson’s registration became delinquent when he submitted his renewal form after the registration deadline. He said he wasn’t aware that his registration was in delinquent status until OSBEELS was contacted by DOJ to verify his registration status in regards to an OSHA hearing, for which Mr. Martinson was providing testimony. Mr. Martinson said he never received any notice from OSBEELS regarding his delinquent status and his payment was processed through his bank. He paid the delinquent fee as soon as he was aware of the issue. He also wrote a report for the defense attorney, which provided his opinion and conclusion regarding the excavation project at the center of the hearing. It was clear that his testimony and report were relevant to the hearing because of his education and experience as an engineer.

The Committee noted, during a review of Mr. Martinson’s record, that he was consistently delinquent in his licensure throughout his time as a registered professional in Oregon. The Committee’s opinion was that it was very dangerous for an individual without appropriate licensure to testify on the shoring issues referenced in his testimony and report, as improper shoring could cause injuries to those on-site. While reviewing Mr. Martinson’s response, the Committee pointed out that Mr. Martinson said he testified and wrote the report from the viewpoint of his Construction Document Technologist (CDT) certification and not as an engineer. He said he performed no mathematical or engineering calculations. Mr. Wilkinson said his opinion was based on his engineering experience, which still falls under the definition of the practice of engineering. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$700 and a six-month suspension for violations of ORS 672.045(1) and (2) and ORS 642.020(1). The Committee also directed Staff to perform a preliminary evaluation regarding Mr. Martinson’s work history during his previous periods of delinquency to assess if any additional violations occurred.

#### 2743 Timothy Bardell/City of Gresham

Mr. Bardell signed and sealed three engineering projects in Oregon while his registration was delinquent. He was aware of his delinquency in July 2011, but continued performing engineering work on the Golgotha Church project in Oregon. The project description was sealed after he became aware that his registration was delinquent and the expiration date on his seal was a different year from the Structural Design Calculations page. In addition, the project documents

for his two other Oregon projects did not include an expiration date for his seal or gave March 31, 2011 as the expiration date. Mr. Bardell used three different expiration dates, or didn't include one, on his Oregon seal for various project documents. Additionally, the Golgotha Church is considered a significant structure under ORS 455.447 and Mr. Bardell completed design work on the project when he is not registered as a structural engineer.

The Committee had a number of questions about Mr. Bardell's projects. The company he was designing for was based out of Washington, but the structures were built in Oregon. The Committee asked for additional information about the steel building he designed for U.S. Fish and Wildlife after his license had become delinquent. Staff was directed to gather additional information about Mr. Bardell's projects in Oregon to be reviewed at the October Committee meeting.

#### 2744 - Daniel Kidd/OSBEELS

Mr. Kidd was given the title of "Project Engineer" by his employer, Charter Construction, but he does not hold licensure in Oregon. This title was reflected on his business cards and the Charter Construction's website. Charter Construction revised Kidd's title to "Project Manager" and updated the website to reflect the new title. However, Charter Construction offers services in both Oregon and Washington. While the title "engineer" isn't protected in Washington, Charter Construction doesn't clarify in which office the rest of the employees with an "engineering" title work. According to the Committee, this seems to imply that Charter Construction is offering engineering services in Oregon without licensure. Ms. Peterson said, other than amending Mr. Kidd's title, Charter Construction has made no effort to come into compliance with OSBEELS regarding the use of the term "engineer" for unlicensed personnel working in Oregon. The Committee was informed that a Company Questionnaire and a respond to allegations letter were sent to Charter Construction and there was no response. Staffs were directed to open a case against Charter Construction. The Committee recommends the Board approve closing Mr. Kidd's case as "compliance met."

#### 2745 – Nathan Daniel Wayne Stark/OBAE

The Board received a complaint on October 21, 2011 that alleged that Mr. Stark provided structural engineering services on a retail project without registration as a structural engineer. The 2005 project cover sheet for "Sunset Oaks" listed Mr. Stark as the "Structural Engineer." Mr. Stark stated he provided structural design on the "Sunset Oaks" project, which is a 7,234 square-foot retail building (non-significant structure) designed around 2005. He completed the structural "S" sheets under his professional registration as a civil engineer. Mr. Stark said he was acutely aware that he could not use the title of "Structural Engineer" unless registered to do so. The head of the Architectural Department for LDC Design Group said that Mr. Stark was not responsible for creating the Project Contact Sheet and would have never seen it to notice the title error. Mr. Stark said, had he known, he would have corrected the error. After discussion, the Committee recommends the Board approve closing Mr. Stark's case as "other," as the title error was out of his control.

#### 2747 – Timothy Dugan/OSBEELS

The Board received a complaint on October 27, 2011 asserting that Tim Dugan, of Compression Engineering Corporation, was advertising engineering services by using the "PE" designation and giving staff the "PE" designation. Neither Mr. Dugan, nor his staff, are registered

professional engineers. The initial letter sent to Mr. Dugan was sent to an address listed on a business card, which was no longer valid. The email was no longer valid either. When the case became active May 4, 2013, Mr. Dugan was contacted through the contact information listed on his company website. He promptly responded and informed investigators that he was a PE in Washington and California and wasn't aware he couldn't use the term while operating a business in Oregon. When investigators explained to Mr. Dugan that he was also violating Oregon rules and statutes by offering engineering services in Oregon without an Oregon registered professional engineer on staff and giving his staff engineering titles, he removed his website until the web designer could appropriately update it. Mr. Dugan is also actively pursuing comity licensure in Oregon. After discussion, the Committee recommends the Board close Mr. Dugan's case as "compliance met."

#### 2758 – Randall John LaPlante/OSBEELS

Mr. LaPlante was selected to participate in an audit of his PDHs obtained during the period of January 1, 2009 through December 31, 2010. Mr. LaPlante failed to submit the proper documentation verifying his PDH units until after a law enforcement case was opened. He submitted the appropriate documentation on February 18, 2012 and compliance was met. After discussion, the Committee determined that, while Mr. LaPlante was ultimately compliant, he failed to cooperate with the audit and did not properly respond to Board requests until a law enforcement case was opened. The Committee determined to issue a NOI for a \$500 civil penalty for a violation of OAR 820-020-0015(8).

#### 2759 – Paul D. Raymond/OSBEELS

Mr. Raymond was selected to participate in an audit of his PDHs for the renewal period of January 1, 2009 through December 31, 2010. He failed to submit the proper documentation verifying his PDH units until after a law enforcement case was opened. Mr. Raymond submitted the appropriate documentation on February 17, 2012 and compliance was met. Mr. Raymond's case included the extenuating circumstance that he was out of the country when the audit request was sent. The Committee recommends the Board close Mr. Raymond's case as "compliance met."

#### 2760 – Thomas Werner Pennington

Mr. Pennington was selected to participate in an audit of his PDHs for the renewal period of January 1, 2009 through December 31, 2010. He failed to respond to numerous attempts by the auditors to contact him and gain his compliance with the audit request, which was due to having failed to inform the Board of his address change. When he was contacted via email by the Regulation Department, he responded with his CPD Organizational Form and supporting documentation, at which point, compliance was met. The Committee determined to issue a NOI for a \$250 civil penalty for a violation of OAR 820-010-0605(1).

#### 2761 – James Edward Pfluger/OSBEELS

Mr. Pfluger was selected to participate in an audit of his PDH units for the audit period of January 1, 2009 through December 31, 2010. He responded with a letter stating that he had incorrectly filled out the renewal form and had intended for his payment to go toward putting his license in "inactive" or "retired" status. OSBEELS sent him another letter requesting the proper PDH documentation for the period. Mr. Pfluger responded with another letter reiterating his

intention to place his Oregon license in “inactive” or “retired” status and stating that he had received 10 PDHs during the renewal cycle in question. He did not include a CPD Organizational Form or supporting documentation.

The Regulation Department also attempted to assist Mr. Pfluger in coming into compliance, but he informed them, that he did not have the documentation requested. After discussion, the Committee determined to issue a NOI for a \$3,000 civil penalty and a 90-day suspension for violations of OAR 820-010-0635(1), OAR 820-020-0015(8) and OAR 820-020-0025(1).

#### 2763 – Keith L. Short/OSBEELS

Mr. Short was selected to participate in an audit of his PDHs for the renewal period of July 1, 2008 through June 30, 2010. He submitted a CPD Organizational Form claiming 30 PDHs, but submitted no supporting documentation. He did not respond to additional requests from auditors for the supporting documentation. When contacted by the Regulation Department, Mr. Short said he was unaware of the requirement to submit supporting documentation. He submitted the missing documentation, at which point, compliance was met. After discussion, the Committee determined to issue a NOI for a \$500 civil penalty for failing to cooperate, in violation of OAR 820-020-0015(8).

#### 2765 – Art Noxon/OSBEELS

Mr. Noxon has repeatedly (7 occurrences from 2010-2013) submitted letters and exam reports to OSBEELS with a noncompliant seal, while acting as the exam development liaison to the Board for the Acoustical Engineering exam. There were a number of seal violations including:

- Use of the phrase “EST”
- Expiration date of 2010 applied to a document dated in late 2011
- Registration date listed as Dec. 31, 1984 – should be Feb. 3, 1983
- Signature copied via stamp, as opposed to handwritten in ink, as required by OAR 820-010-0620(4)
- Extra banner above the seal with the word “Acoustical” in the style of a structural engineering seal
- Incorrect engineer number of “1964,” when it should be “11964”

As of July 26, 2013, Mr. Noxon provided the Regulation Department with a copy of his newest seal, which is in compliance. AAG Lozano noted that this case has two separate issues for the Board: a law enforcement case and exam development issues. Mr. Hoffine said the Committee can only deal with the law enforcement issue at this time. Ms. Newstetter said that the Board had already extended professional courtesy to Mr. Noxon by giving him a chance to bring his seal into compliance the first time. She added that the Board must be prepared to part ways with Mr. Noxon for the Acoustical Engineering exam. After discussion, the Committee determined to issue a NOI for a \$2,500 civil penalty and a 90-day suspension for multiple violations of OAR 820-010-0620(1), (2) and (4).

#### 2766 – Jeff Cully/Neil Sutton

Mr. Cully was using the term “RF Engineer” as an employee of Verizon Wireless. The job title was used to represent individuals in the engineering department of the wireless carrier. Their job did not involve performing any regulated engineering tasks. An attorney for Verizon Wireless and Mr. Cully said the City of Portland requires communications about radio frequencies to be submitted in a letter from an “RF Engineer.” After being notified of the issue, Mr. Cully stopped

using the term in his signature. After discussion, the Committee recommends the Board close Mr. Cully's case as "unfounded."

#### 2769 – Theodore E. Leonard/Randall Trox

Mr. Trox, onsite program coordinator for DEQ, forwarded an email to OSBEELS regarding a proposed "alternative wastewater design" submitted by Mr. Leonard. Mr. Trox said this design was far below DEQ standards. The document contained Mr. Leonard's engineering seal with his signature and "Ret." written next to the seal to denote that he was a retired engineer. Since Mr. Leonard was retired, use of his seal would be in violation of OAR 820-010-0520(2) were it not for the exemption described in ORS 672.060(11) and the fact that the structure in question was on the respondent's private property. Mr. Trox was recently contacted to request an update on the case and he informed Staff that the county had stopped the project due to the non-compliant nature of the septic system and that he had no problem with OSBEELS dropping the complaint he made against Mr. Leonard regarding non-compliant use of an engineering seal. After discussion, the Committee recommends the Board close Mr. Leonard's case as "allegations unfounded."

#### **New Business**

##### Preliminary Evaluation: Ponnathpore, disciplinary action

Mr. Ponnathpore's case was originally discussed during the May 2013 Committee meeting. More information was necessary to determine if Mr. Ponnathpore had been disciplined by the Oklahoma Board and had failed to disclose that when applying to OSBEELS. Investigators contacted the Oklahoma Board and staff there confirmed that Mr. Ponnathpore was disciplined with a \$500 civil penalty for unlicensed practice of engineering. The Oklahoma Board had failed to update this information in their disciplinary action database. Mr. Ponnathpore's application with OSBEELS only asked him to disclose felony convictions or registration denials – not civil penalties from other state boards. The Committee agreed with AAG Lozano's suggestion to send Mr. Ponnathpore a Letter of Concern regarding reporting disciplinary actions, regardless of severity. No case will be opened.

##### Preliminary Evaluation: Stephen Hoffman, Massachusetts disciplinary action

Mr. Hoffman notified OSBEELS that six states took reciprocal actions based on administrative actions by the Massachusetts Board. He believed he had notified OSBEELS of the original action, but no documentation was found in his file. The Massachusetts Board revoked his professional engineering registration in August 30, 2000; then later reinstated it. According to the Massachusetts Board, Mr. Hoffman stamped structural building plans for a company that manufactures prefabricated building using his mechanical engineer seal. Two buildings, both riding stables which offered lessons to children and adults and housed horses, experienced structural failures. No injuries or fatalities occurred. The Massachusetts Board found that Mr. Hoffman had failed to investigate and consider vital conditions specific to the properties, failed to specify and check the materials to be used in constructing the buildings and failed to inspect the sites at any time before, during or after construction. As a result, the buildings failed to meet code requirements.

The potential violations identified by investigators are as follows:

- OAR 820-020-0015(6)
  - His license was revoked which constitutes a violation of ORS 672.020 to ORS 672.310.
- ORS 672.020(2) and OAR 820-020-0015(10)
  - His license was revoked based on stamping plans not prepared under his control and supervision.
- OAR 820-020-0015(2)
  - He failed to adequately validate the structural integrity of the buildings and to ensure compliance with building codes.
- OAR 820-020-0045(4)
  - There is no evidence of his timely notification of the Board regarding his license revocation in another state. His license was revoked in 2000, but OSBEELS wasn't notified until 2013.

The Committee directed Staff to find out when the mandatory reporting rule was adopted by OSBEELS to ensure Mr. Hoffman's disclosure was necessary in 2000. The Committee will further discuss this case at the October meeting.

Preliminary Evaluation: Stephen Maslan, Kansas disciplinary action

Mr. Maslan's secretary sent an email to 26 licensing boards, including OSBEELS. It contained a Final Order from Kansas, a refusal to renew letter from Mississippi and Findings of Fact from Missouri. After searching the NCEES Enforcement Exchange, investigators found actions by the state boards of Missouri, New Hampshire, North Carolina, Colorado, Kansas, Kentucky and Oklahoma. Enforcement actions from Wisconsin, Indiana and Virginia were found without documentation. The potential violations identified by investigators are as follows:

- For the 2006/2009 Missouri unlicensed practice of architecture violation, there is an exception under the architect statute ORS 671.030(1) which states that unlicensed practice of architecture does not apply to the "practice...of engineering by a registered professional engineer." It appears that the original violation would not be grounds for a charge in Oregon. Additionally, the sanction is probation, which appears not to rise to a level to trigger OAR 820-020-0015(6).
- OAR 820-020-0045(4) requires applicants or registrants to give written notification to the Board of any disciplinary action or sanction related to the practice of engineering, land surveying, or photogrammetric mapping. However, Mr. Maslan's disciplinary action was not related to the practices of engineering, land surveying or photogrammetry.
- For the second set of violations, the Kansas Board found Mr. Maslan had "deviated from generally accepted engineering standards" in the design of fire alarm systems at a church and a Big Lots store. There are two points to consider:
  - Nine of the deviations "were a danger to the health, safety, and welfare of the public." This at a minimum would be a violation of OAR 820-020-0015(2).
  - Yet, the Kansas Board placed his registration on two-year probation and levied \$25,000 in penalties and fees. The Kansas Board listed the Missouri unlicensed architecture violation.

- Therefore, while the violation might be grounds for a charge, the probation does not appear to rise to the revocation or suspension level needed to trigger OAR 820-020-0015(6).
- An Oregon issue may arise from the Missouri Board's revocation of his registration, but this and the Oklahoma Board's two-year suspension were as a result of the original Kansas action.
- With the exception of the email from his secretary, there are no documents on file indicating timely notice to the Board of the original actions or of any reciprocal actions.

Ultimately, the Committee determined that the unlicensed practice of architecture was not within the Board's authority and the sanction was not a suspension or revocation, which is needed for reciprocal action in Oregon. The Kansas violation could be considered grounds for a charge in Oregon, however, the sanction was probation, which again did not rise to the level of sanction needed for reciprocal action in Oregon. The Committee determined to send Mr. Maslan a letter of concern regarding the importance of timely reporting of all disciplinary actions taken against his professional registration by other states.

Preliminary Evaluation: St. Anthony's Hospital, engineering seals

Ms. Newstetter disclosed a current working relationship and recused herself from the discussion. A complaint was received on March 6, 2013 from David O. Cram, PE, alleging that three engineers signed and/or stamped documents for geotechnical reports on a project at St. Anthony's Hospital and were not licensed as geotechnical engineers in Oregon. There were two engineering firms and three engineers involved in the reports for the proposed hospital in Pendleton.

- Dee J. Burrie, PE, is a branch manager for the Washington-based Shannon & Wilson, Inc. Geotechnical and Environmental Consultants. He is actively registered as a civil engineer in Oregon. His LinkedIn profile indicates several years of geotechnical experience.
- Lloyd J. Reitz, PE, is a senior principal engineer, also with Shannon & Wilson, Inc. He is actively registered as a civil engineer in Oregon. He has applied for registration by comity in Washington. His experience summary from his comity application indicated more than three years of geotechnical experience.
- Andrew Robinson, PE, is actively registered as a civil engineer in Oregon. He had more than two years of experience working for Foundation Engineering in Oregon, along with courses at Oregon State University such as soil engineering, soil mechanics and soil testing when he applied to take his PE in 2003.

Based on this information, investigators believed these individuals were practicing within their areas of competence based on education or experience, as per OAR 820-020-0020. None of the individual gave themselves the title of "geotechnical engineer." It was also discovered, however, that both Mr. Reitz and Mr. Robinson had non-compliant seals. They were given the opportunity to submit seals in compliance with OAR 820-010-0620. However, the Committee discovered that the corrected seals submitted were still non-compliant. The Committee determined to open a case on both Mr. Reitz and Mr. Robinson and send respond to allegations letters along with a copy of sample compliant seals to use as a reference.

Preliminary Evaluation: Sean Connolly, Montana disciplinary action

Sean Connolly, PE, notified the Board on May 8, 2013 of a Notice to Cease and Desist from the Montana Board regarding the unlicensed practice of engineering. The Committee reviewed a preliminary evaluation related to Mr. Connolly in February 2013. Michael Spreadbury submitted a complaint alleging that Mr. Connolly had not reported disciplinary action from November 2, 2011 by the Montana Board. The Montana Board indicated that the complaint was not considered “actual discipline,” but was more of a “dismissal letter” to dismiss the complaint. The Committee determined to not open a case against Mr. Connolly.

The Montana Board responded to a new complaint from Mr. Spreadbury by reopening the previous case. Investigators contacted the Montana Board’s executive director who responded that it was again dismissed. However, Mr. Connolly said there was some discussion that resulted in the Montana Board issuing him a Notice to Cease and Desist on April 29, 2013. Investigators contacted the Montana Board to determine if this action was still considered non-disciplinary, but there was no response. The Committee determined to not open a case against Mr. Connolly.

Preliminary Evaluation: Raymond DiPasquale, New Jersey disciplinary action

On April 17, 2013, OSBEELS received a comity application from Raymond DiPasquale. While processing the application, Registration Specialist Matt Bryan found that Mr. DiPasquale had a violation and sanction reported on the Enforcement Exchange for the National Council of Examiners for Engineering and Surveying (NCEES). The file was sent to the Regulation Department for review. The New Jersey Board was contacted regarding the reported violation and sanction, but there was no response. Mr. DiPasquale sent investigators the Final Order from the New Jersey Board. He explained that he was originally licensed in New Jersey, but left for a job in South Carolina. When he returned to New Jersey, there was miscommunication between him and staff relating to the renewal of his New Jersey license. When he discovered his New Jersey license hadn’t been renewed, he self-reported to the New Jersey Board and notified his clients and business associates of the error. The New Jersey Board found that he had practiced engineering with a lapsed license from May 1, 1994 to April 1, 1997. Upon review of Mr. DiPasquale’s statement, the New Jersey Board ordered him to pay a civil penalty of \$200, which was paid, along with his required reinstatement fees. He noted in his application to OSBEELS that he had engaged in unlicensed practice in New Jersey “for a portion of 1997.” Mr. DiPasquale was licensed in South Carolina and Maryland for the rest of the time in question by the New Jersey Board. Investigators noted that the comity application only asks if the applicant has been convicted of a felony or denied registration, neither of which applied to Mr. DiPasquale. The Committee determined to not open a case against Mr. DiPasquale.

**Unfinished Business**

Case Disposition

**The following case is ready for Board approval of the Consent Calendar:**

**Default Final Orders**

2738 – Fredrick J. Proffitt – NOI uncontested and civil penalty remitted in full.

### 2829 – Watson: Discuss draft NOI

Ms. Newstetter recused herself from discussion and left the room. AAG Lozano noted that there were some issues with the drafting of Mr. Watson's NOI. Primarily, more information is needed regarding how Mr. Watson conducted his resurvey of BLM land. AAG Lozano explained that the issue isn't with the end point monuments Mr. Watson set because there is more than one legitimate practical way to determine an end point, and there are no land surveying standards – for regular surveys – in Oregon law or rules. However, in this case, Mr. Watson did not conduct a regular survey, but a resurvey of a government survey. For resurveys of government surveys, there are set practice standards in Oregon law, and the surveying procedural steps must be done – by law – in reference to the BLM manual. It will be this question of whether Watson followed the BLM manual's process that is the focus of the investigation. Mr. Hoffine asked if BLM had given any feedback regarding Mr. Watson's survey. Mr. Wilkinson said the BLM doesn't issue opinions on situations such as this. AAG Lozano suggested Mr. Wilkinson further investigate Mr. Watson's compliance with the BLM manual and consult with Mr. Singh. Mr. Burger asked if the additional time and resources were necessary expenditures for this case. AAG Lozano said that this is one of three complaints against the same surveyor and the Board needs to ensure the individuals licensed are properly performing their tasks in accordance with Oregon rules and statutes. After discussion, the Committee directed Mr. Wilkinson to perform additional investigative work on this case and consult with Mr. Singh.

### Discuss respondent's rejection of settlement agreement: 2734 – Gary D. Wicks

Following an informal conference, a settlement agreement was reached on June 13, 2013 for a civil penalty of \$1,000 for violations of OAR 820-010-0635(1) and (5) and OAR 820-020-0015(8). On July 5, 2013, OSBEELS received a revised settlement agreement from Mr. Wicks with his check for \$1,000. He also included a signed receipt verifying he had sent OSBEELS information pertaining to his audit on May 18, 2011. AAG Lozano said the Committee had two options, since it couldn't legally enter into a settlement agreement that Mr. Wicks had edited. The Committee could either invite Mr. Wicks to another informal conference or the Board could take the case to an administrative law hearing. The Committee determined to invite Mr. Wicks back for an informal conference during the October 2013 meeting to discuss an amended settlement agreement.

### 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).

### Attorney General Updates

#### 2618 – Martinez, OAH referral

AAG Lozano reported that his hearing was held July 23, 2013 and closing arguments had been submitted.

### Pending JCC Review

2726 - David Gowers

2725 – James Rodine

**ORS 192.690(1)**

**2813 – DL Design Group, Inc.: Discuss Default Final Order**

The Committee discussed the Default Final Order for DL Design Group, Inc. Gary Darling submitted additional information regarding the NAICS codes his company has been using. Code 237210 references land subdividing and Mr. Darling said his company uses the code to reference the engineering involved in the subdividing process, not the act of subdividing land. AAG Lozano said, in this situation, it's difficult to use the codes in the way intended while still remaining in compliance with Oregon rules and statutes. The Committee discussed that there have been a number of issues with the NAICS codes and the explanations of scope related to each code is often unclear or difficult to understand. While this can make it difficult to determine if licensure is required to utilize some of the codes, the codes are determined at the federal level and the Board does not have jurisdiction over the code language. Due to this mitigating circumstance, the Committee determined to reduce the civil penalty to \$500 per offense, for a total of \$1,000. The Committee recommends the Board approving closing the associated case against Irina Leschuk (#2777) as "other," since the corporation was determined to be the respondent in this matter.

The meeting adjourned at 5:09 p.m.