



Oregon

STATE BOARD OF EXAMINERS
FOR ENGINEERING &
LAND SURVEYING

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting
August 11, 2016

Members present:

Bill Boyd, Chair
Jason Kent
Dave Van Dyke
Ron Singh

Staff present:

Mari Lopez, Board Administrator
Jenn Gilbert, Executive Assistant
Lisa Montellano, Investigator
Christina Ulberg, Investigator

Others present:

Katharine Lozano, Assistant Attorney General
Marvin Krush, PLS (by telephone)
Adam Thompson, KOIN 6 News

The meeting of the Law Enforcement Committee (LEC) was called to order at 8:06 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

Public Comment

There was no public comment.

Case Status Report

Total cases open: 79
No comments were offered.

LEC Cases Subject to Monitoring and Collections Report

Case Dispositions

2915 – Kleypas, Lawrence

Chair Boyd summarized the case explaining the allegation and investigation into failure to seal and sign a document. Kleypas accepted the Notice of Intent (NOI) and did not contest. It was moved and seconded (Boyd/Van Dyke) to issue a Final Order by Default. The motion passed unanimously. There was no further discussion.

2987 – Nelson, Dennis

AAG Lozano summarized the case by explaining that upon reviewing the initial Final Order by Default issued in 2011, a procedural error was discovered in the original case #2625. Boyd asked if the 2011 case would need to be reopened. AAG Lozano said she would review the information in the case and recommend an appropriate course of action. It was moved and seconded (Singh/Boyd) to close case #2987 as insufficient evidence. The motion passed; Kent abstained.

2995 – Hong, In Ho

Montellano pointed out a procedural error on the original Final Order issued to Hong in case #2673. It was moved and seconded (Boyd/Singh) to withdraw the Final Order by Default. There was no further discussion. The motion passed; Kent abstained.

2996 – Aizawa, Yukimasa

Montellano updated the LEC on the status of the NOI to Revoke Registration sent to Aizawa for failure to pay a civil penalty previously imposed by the Board in case #2740. Montellano received confirmation of service to Aizawa and a hearing was not requested within 21 days, so it was moved and seconded (Boyd/Van Dyke) to issue a Final Order by Default. The motion passed unanimously. There was no further discussion.

2997 – Lee, Chang-Woo

Montellano updated the LEC on the status of the NOI to Revoke Registration sent to Lee for failure to pay a civil penalty previously imposed by the Board in case #2802. Montellano received confirmation of service to Lee and a hearing was not requested within 21 days, so it was moved and seconded (Boyd/Van Dyke) to issue a Final Order by Default. The motion passed unanimously. There was no further discussion.

2998 – Kim, Sung Ho

Montellano updated the LEC on the status of the NOI to Revoke Registration sent to Kim for failure to pay a civil penalty previously imposed by the Board in case #2840. Montellano received confirmation of service to Kim and a hearing was not requested within 21 days, so it was moved and seconded (Boyd/Van Dyke) to issue a Final Order by Default. The motion passed unanimously. There was no further discussion.

2999 – Sano, Itaru

Montellano updated the LEC on the status of the NOI to Revoke Registration sent to Sano for failure to pay a civil penalty previously imposed by the Board in case #2862. Montellano received confirmation of service to Sano and a hearing was not requested within 21 days, so it was moved and seconded (Boyd/Van Dyke) to issue a Final Order by Default. The motion passed unanimously. There was no further discussion.

Informal Conferences

2876 – Krush, Marvin

Marvin Krush, PLS, met in an informal conference by telephone with the LEC in an attempt to reach a settlement agreement. Krush, although providing extensive details on the projects included in the NOI issued against him, his various client relationships, and his professional

practices, agreed that the violations alleged had been committed, except for on the Dwyer property. On the Dwyer property, the complainant alleged that Krush had not set the corners as indicated on the map of survey, but Krush insisted that the complainant was incorrect and he (Krush) had set the corners as indicated on the filed map of survey, that they had been set from the beginning, and would stand by that assertion.

Kent and Boyd asked Krush if he had any suggestions for settlement terms. Krush suggested \$1,000 civil penalty and no revocation.

The Committee exited its public meeting pursuant to Oregon Revised Statute (ORS) 192.690(1) for private deliberation on a contested case. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was announced that no decisions were made and no votes were taken.

Upon returning to public meeting, it was moved and seconded (Boyd/Kent) that the Board order revocation of Krush's professional land surveying registration and impose a civil penalty of \$6,000, \$1,000 per violation, with the Dwyer property violation dismissed, but that revocation and \$3,000 of the civil penalty will be deferred, revocation dismissed and the deferred civil penalty amount waived, if Krush complies with settlement conditions. The conditions proposed were: the \$3,000 of civil penalties that are not deferred must be paid over the next 30 consecutive months, in timely payments; Krush commits no new violations in the next three years; Krush obtains peer review of his work for the next three years by a licensed surveyor who has a clean disciplinary history and is approved by the Board. All peer review costs will be borne by Krush. If there are violations of any of the terms of the settlement agreement, the full \$6,000 civil penalty becomes immediately due and payable, and revocation of Krush's professional land surveying registration becomes effective. The motion passed unanimously. Krush is willing to enter into the settlement agreement as proposed. Kent stressed Krush finding a peer reviewer prior to the October 12, 2016 deadline. AAG Lozano also explained the process surrounding submitting the settlement agreement for the Board's approval. There was no further discussion.

Cases Subject to OAR 820-015-0060

2988 – Toby Bolden/Terry Marsh

Chair Boyd summarized the case and the LEC reviewed and discussed the evidence and potential violations. Marsh alleged that a survey crew from Centerline Concepts had entered his property without providing right of entry notice, for the purpose of establishing property lines. Centerline was hired by Green Planet, a future occupant of the property which abuts Marsh's property. Bolden is the survey manager for Centerline and was in charge of the survey crew. Witnesses interviewed reported that the crew member entered their property prior to making contact with any owner/occupant. Once contact was made, the crew member explained that he was performing a survey, but did not give notice in writing, nor did he post notice in a conspicuous place. When interviewed, the crew member admitted that he only gave notice verbally.

The LEC discussed right of entry notice requirements and whether separate notice must be given when the occupant of a property is different than the landowner. After reviewing the evidence, the LEC concluded that by establishing all four corner monuments, Centerline was required by

statute to give right of entry notice to the adjoining landowners and the occupants (when different from the landowner). It was moved and seconded (Van Dyke/Kent) to issue an NOI assessing a civil penalty of \$1,000 for violation of ORS 672.047(4). The motion passed unanimously. There was no further discussion.

2990 – Dale Hult/Jane Gille

Montellano presented the allegations, evidence and potential violations to the LEC for review and discussion. In her original complaint, Gille named Ray Moore and case# 2948 was opened on Moore. After initial investigation, it was discovered that Hult was in charge of the survey crew. During the April 7, 2016, LEC meeting, staff was directed to close case# 2948 and open a new case in Hult's name. There was discussion on the meaning of tied monuments and what requires right of entry notice for surrounding landowners. Montellano pointed out that in correspondence with the Board, Moore wrote that the survey crew tied property corners around the site and marked the common property line between the Gille property and the work site. Hult wrote that the survey crew added a small amount of flagging to the property line adjoining the work site and the Covelle property to the south. After discussion, it was moved and seconded (Kent/Singh) to issue an NOI assessing a civil penalty of \$500 for violation of ORS 672.047(4). The motion passed unanimously. There was no further discussion.

2929 – Mats Jarlstrom/OSBEELS

Chair Boyd gave an overview of the allegations, evidence and potential violations to the LEC for review and discussion. Jarlstrom initially contacted OSBEELS via email requesting assistance investigating transportation engineering in Beaverton, Oregon. In that email, Jarlstrom stated that he was already working to protect the health, safety and welfare of the general public. He claimed that two City of Beaverton engineers were misapplying engineering practices and expressed interest in being a Board member because he was, *“already doing this kind of work.”* OSBEELS investigator Wilkinson reviewed Jarlstrom's communication as well as his website and then responded, explaining that the traffic formulas the City of Beaverton utilizes are governed by the Oregon Department of Transportation (ODOT) and are not within OSBEELS' jurisdiction. Additionally, Wilkinson offered Jarlstrom a complaint form in the event he wished to file a formal complaint, and then provided him with ORS 672.005(1) which defines the practice of engineering, and ORS 672.020(1) which prohibits practice without registration. Wilkinson cautioned Jarlstrom that claiming to be an engineer or using the title of engineer without registration is a violation. Jarlstrom responded, stating that he would correct his website and refrain from use of verbiage indicating he is an engineer. OSBEELS Administrator Lopez also emailed Jarlstrom offering to meet with him to discuss his concerns and again providing the complaint form if he wished to file a complaint. Jarlstrom did not schedule a meeting and has not filed a complaint. In subsequent emails Jarlstrom sent to OSBEELS, he stated, *“I'm an excellent **engineer** as you can see from the results I can deliver to the world”* and further asserted that he is exempt from licensure which is, *“why I can call myself an engineer.”* Jarlstrom claimed to be exempt from registration requirements because he was not offering engineering services to the public. In a letter he sent to the Washington County Sheriff, however, he stated that he, *“invented and publicly released a new extended solution to the original problem with the amber signal light in traffic flow which was first solved in 1959.”*

The LEC carefully deliberated the evidence and whether or not Jarlstrom's actions are the unlicensed practice of engineering. Van Dyke expressed his opinion that by Jarlstrom refuting the professional opinion of the professional engineers who had engineered the original formula and claiming that they were incorrect, he was practicing engineering.

The LEC referred to the statute defining the practice of engineering which states in part:

672.005 Additional definitions. As used in ORS 672.002 to 672.325, unless the context requires otherwise:

(1) "Practice of engineering" or "practice of professional engineering" means doing any of the following:

(a) Performing any professional service or creative work requiring engineering education, training and experience.

(b) Applying special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, testimony, evaluation, planning, design and services during construction, manufacture or fabrication for the purpose of ensuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects.

Discussion centered around subsection (1)(b) and the application of mathematics, physical and engineering sciences pertaining to consultation, investigation, testimony and planning for the purpose of ensuring compliance in connection to any public or private utilities, machines, equipment and processes.

Singh offered that in the context of research, using one's knowledge and education is fine for research purposes, but there are appropriate avenues to follow such as collaborating with academia or another licensed engineer to perpetuate that research. He did not feel that Jarlstrom followed the appropriate avenues. Lopez stated that the steps to become registered in Oregon had been explained to Jarlstrom, but he has never submitted an application to the Board.

AAG Lozano suggested review of a similar case that has been adjudicated (case #2572) in which Stephen Topaz also engaged in unlicensed practice and the case was upheld in appellate court. The LEC reviewed final documents in the Topaz case in which it was determined that submitting engineered documents to a public body constitutes the practice of engineering.

The LEC then discussed potential violations of the title act. Jarlstrom had verbiage on his website where he claimed to be an engineer, as well as referring to himself as an engineer in multiple emails to OSBEELS and other members of the public. Jarlstrom modified a commonly used traffic engineering formula and submitted it to various public entities while claiming to be an engineer. It was moved and seconded (Boyd/Singh) to send an NOI assessing a \$500 civil penalty for the unlicensed practice of engineering which is a violation of ORS 672.045(1) and a letter of concern for using the title of engineer without a license which is a violation of ORS 672.007. The motion passed unanimously. There was no further discussion.

2989 – Brad Hupy/Anonymous

Chair Boyd gave an overview of the allegations, evidence and potential violations. Hupy's registration became delinquent on July 1, 2013 and has not been renewed. In the course of the investigation, Montellano obtained a list of projects stamped by Hupy which totaled 164 projects. Hupy admitted that he allowed his registration to become delinquent due to deficient Professional Development Hours, and he is still using the PE and GE designation after his name on the company website. The LEC discussed the violations and it was moved and seconded (Kent/Boyd) to issue an NOI assessing a civil penalty of \$167,100 for 164 violations of ORS 672.020 for unlicensed practice, 2 violations of OAR 820-020-0025(1) for untruthful statements, 1 violation of ORS 672.007(1) for advertising and offering engineering services without a license and 1 violation of OAR 820-020-0050(1) for failing to report an address change to OSBEELS within 30 days. The motion passed unanimously. There was no further discussion.

3003 – Black Mountain Consulting/Anonymous

Chair Boyd provided an overview of the allegations, evidence and potential violations. OSBEELS received an anonymous complaint that Black Mountain Consulting, LLC was advertising and offering engineering services without having a full time partner, manager, officer or employee physically present in the Sherwood office. The investigation showed that the company does have a licensed engineer for their Portland location, but they do not have a licensee working in Sherwood. The investigation also revealed that Joe Bauer is using the title of environmental engineer on the company's website and his LinkedIn page. John Estrem and Jeanne Niemer, owners of Black Mountain, were involved in a previous law enforcement case while employed by Adapt Engineering. Case #2836 resulted in letters of concern being sent by the Board. Discussion was had about similar cases and the fact that this is the second case Estrem and Niemer have been involved with. It was moved and seconded (Boyd/Kent) to issue an NOI assessing a \$1,000 civil penalty for violation of OAR 820-010-0720. The motion passed unanimously. The LEC then discussed opening a case against Joe Bauer for use of the title environmental engineer. It was moved and seconded (Boyd/Van Dyke) to open a case against Joe Bauer for title violation. The motion passed unanimously. There was no further discussion.

2969 – Patrick Fiedler/OSBEELS

Chair Boyd summarized that Fiedler notified the Board that he signed an Application for Consent Order with New York Education, Office of Professional Discipline, State Board of Engineering and Land Surveying (NY Board). The NY Board took action against Fiedler for allowing "an engineering company to offer and/or practice engineering" without a certificate of registration in Ohio. Fiedler was found to be in responsible charge in Ohio and had been sanctioned in that state. As a result, the NY Board suspended his registration for one year, which was stayed and his registration was placed on probation. The NY Board also assessed him a \$1,500 fine. OSBEELS reviewed their records and found no notification to the Board for the original Ohio action. Since Oregon does not require certificate of authorization (COA), there was no cause for concern with offering to practice without a COA.

Fiedler indicated his staff prepared notifications to over thirty states in which he was licensed to comply with reporting deadlines, they happened to miss the state of Oregon. AAG Lozano noted that he notified the Board of the New York case and discloses the Ohio case information in a manner to allude that the Board was already aware of the Ohio case. This leads to his credibility on how he drafted the letter. Chair Boyd feels that Fiedler thought the original Ohio action

notification went out. Kent agreed that this is a plausible oversight and he was not intending on hiding anything from Oregon.

It was then moved and seconded (Boyd/Van Dyke) to issue a letter of concern reminding him to exercise due diligence with matters dealing with license disciplinary reports. The motion passed; Kent opposed. There was no further discussion.

2991 – James Beck/OSBEELS

Chair Boyd summarized this case as an allegation that Beck stamped documents before renewing his license. From January 1, 2016 to May 3, 2016 his license status was delinquent. Beck claims he did not realize his license was delinquent until he received a letter from OSBEELS. Beck signed one set of documents for Courtyard Marriott in Corvallis, Oregon, for electrical work: construction on this project has not begun.

It was moved and seconded (Boyd/Kent) to impose a civil penalty of \$500. Since the seal is not a compliant design as defined by the OAR, Chair Boyd amended his motion to include a letter of concern regarding the seal violation; Kent accepted the amendment.

There was discussion on the chronological order of completing CPDs as it relates to the renewal schedule and OAR 820-010-0635(1)(a) and 820-020-0015(7) . These rules require registrants to continue professional development and complete 30 professional development hours during each biennial registration period. Concern was raised surrounding how you can actually get renewed if you have not already done your CPDs. AAG Lozano stated that a registrant may renew, but it does not mean they are absolved of violating the rules and should be referred as a law enforcement case. Staff will further discuss with AAG Lozano on this process.

The concerns surrounding this case include practicing while unlicensed and failure to complete CPDs in the appropriate biennium. The LEC reviewed the current motion of \$500 for practicing while unlicensed and the letter of concern for the seal violation. At the time of Beck's first submission he had two CPDs. Questions were raised about if the place he obtained CPDs from mattered. Given the Board does not have an approved list, they were satisfactory at the time of submittal. Beck obtained a majority of his credits from EZ-PDH.com. After further review of his submission he obtained three CPDs during the appropriate biennium, and the remainder of the CPDs were obtained from online resources. Kent went online and found EZ-PDH.com. Additional investigation was requested on the provider and timing concern. Chair Boyd withdrew his motion. A question was raised about if other states have dealt with this education provider and how they felt about them. The concern with this provider is this is looking like more of self-study then class time and that Beck claimed 27 professional development hours in a 24 hour period.

The LEC directed staff to perform further investigation and determine if required contact time was completed and not just passing tests. Direction was also given to investigate the dates attended, actual time and hours spent.

3005 – Amber Wolf/Daniel Cook

Montellano reviewed the allegations, evidence, and potential violations resulting from a complaint filed by Daniel Cook, PE, SE alleging that Amber Wolf, a real estate broker for Oregon Realty Co., altered one of his engineering reports. Wolf hired Cook to perform foundation inspections on two manufactured homes for FHA financing. Cook was contacted by the lender with some concerns about the quality of the one of the foundation reports and it was discovered that Cook's original report had not been sent to the lender. During the course of the investigation, Wolf admitted to signing and cashing a money order from the buyer that was intended to pay Cook for one of the foundation reports, as well as admitting to altering Cook's report in order to make the property sale go through. After discussion, it was moved and seconded (Boyd/Van Dyke) to issue an NOI assessing a \$4,000 civil penalty for: 1 violation of ORS 672.045(1) for engaging in the practice of engineering without a license, 1 violation of ORS 672.045(3) for presenting or attempting to use the certificate or seal of another, 1 violation of ORS 672.045(5) for impersonating a registrant and 1 violation of 672.045(6) for the practice of engineering when not qualified. The motion passed unanimously. The LEC also directed staff to make a referral to the Department of Justice and other relevant agencies.

2932 – Corbey Boatwright/Laurie Balmuth

Montellano offered an overview of the allegations, evidence and potential violations. Balmuth filed a complaint against Boatwright for practicing outside his area of competence and violating rules of professional conduct. Balmuth cited the Code of Ethics for Engineers from the National Society of Professional Engineers (NSPE) in claiming Boatwright acted unethically by practicing outside his scope of expertise, however there was no evidence to support that. OSBEELS is governed by ORS and Oregon Administrative Rule (OAR), not the Code of Ethics for Engineers used by the NSPE. Also, OAR 820-020-0020(1) states in part: *(1) Registrants shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering or land surveying involved.* Whether Boatwright did or did not act as general contractor for the project is outside OSBEELS' jurisdiction. Furthermore, the CCB did not find that Boatwright committed a violation by practicing as general contractor without a license.

Additionally, in regards to Balmuth's allegation that Boatwright violated professional conduct rules and caused stress and harm with incorrect billings - billings and financial statements are also not in OSBEELS' jurisdiction. Interviews were conducted with surrounding property owners and/or their representatives, as well as Howard Biskie, PE, CWRE from the City of Salem Public Works Department and Keith Mills, PE, from the Oregon Water Resource Department. The investigation found there was no evidence to support that Boatwright violated professional conduct rules or acted outside his area of expertise. It was moved and seconded (Kent/Boyd) to dismiss the case as allegations unfounded. The motion passed unanimously. There was no further discussion.

2887 – Comfort Flow Heating/OSBEELS

Chair Boyd summarized the case as an allegation of performing engineering while not having an engineer on staff. Comfort Flow is an HVAC contractor that performed work on a commercial building in Albany. The question raised was if the load calculations the company performed for a commercial air conditioner is considered the practice of engineering. The LEC requested an expert opinion and based on the review completed by the expert reviewer, it was determined, yes, this is the practice of engineering. Chair Boyd explained that HVAC companies may do

load calculations and use a standard formula but the difference in this case is the calculations would have provided a lower temperature than the standard formula.

The expert reviewer concluded, “that when Comfort Flow departed from the application of *prescriptive methods* in the codes and calculated their own system performance to meet *non-standard conditions* based on a performance outcome outside the code prescriptions and the original engineered design, they crossed the line into the practice of engineering.”

After discussion, it was moved and seconded (Kent/Van Dyke) to issue an NOI assessing a \$1,000 civil penalty for a violation of OAR 820-010-0720. The motion passed unanimously. It was also moved and seconded (Van Dyke/Kent) to open a case against the individual who prepared the report for Comfort Flow. The motion passed unanimously. There was no further discussion.

2956 – Nicholas Dente/Zachary Gollier

Chair Boyd summarized that the case involved the allegation of the unauthorized use of a seal and signature relating to plans provided to Portland Public Schools. Gollier is an employee of Dente and was out on leave when the plans were sealed and submitted. Dente sealed plans using Gollier’s stamp and Gollier said he did not perform any work on those plans. The Portland Public Schools did not receive a hard copy of the reports.

Ulberg contacted Gollier and was informed that he had two electronic seals; one was an electronic image of his seal only and he would hand write his signature, and the other was an electronic image of his seal with the signature already included. Gollier said Dente had access to these seal images since they were stored on the server in which Dente had access. Gollier stated Dente was never given permission to use his seal for any purpose at any point in time. Gollier provided documentation showing that leave was taken from August 5, 2015 through September 16, 2015 for a single continuous period.

After discussion, it was moved and seconded (Boyd/Kent) to issue an NOI assessing \$22,000; \$1,000 each for four violations of ORS 672.045(1) for unlicensed practice, \$1,000 each for four violations of ORS 672.045(3) using the seal of another, \$1,000 each for four violations of ORS 672.045(5) impersonating a registrant, \$1,000 each for four violations of ORS 672.045(6) for practicing engineering while not qualified, \$1,000 each for four violations of OAR 820-010-0720 for performing engineering services without a licensed engineer on staff, and \$1,000 each for two violations of OAR 820-010-0720 for advertising/offering engineering services without a licensed engineer on staff. The motion passed unanimously. The concern regarding Gollier’s seals will be tabled until the Dente case is completed. There was no further discussion.

2967 – Charles Loving/Self-Report

Montellano explained that this case was presented to the LEC at the meeting held on June 9, 2016. At that time, the LEC directed staff to investigate further as the projects completed for Bonneville Power Administration (BPA) may have been on federal land and thus would have different licensing requirements. Follow-up investigation confirmed that the projects were indeed on federal land and did not require a licensed engineer, however the issue still remained that Loving untruthfully updated the expiration date on his seal and applied it to the projects

while his registration was delinquent. There was dialogue about the application of Loving's fraudulently updated seal and it was moved and seconded (Boyd/Van Dyke) to issue an NOI assessing a total civil penalty of \$1,000. Loving was assessed a \$250 civil penalty for each of four violations of OAR 820-020-0025(1) for making untruthful statements by forging the expiration date on his seal and applying it four times. The motion passed unanimously. There was no further discussion.

Preliminary Evaluations

Allen/Hathaway

Chair Boyd summarized the case that Eric Allen was using the title "Staff Engineer" on his business card for Professional Service Industries Inc. (PSI). The business card that was provided to the Portland Public Schools during a project walk through at Grant High School shows Eric Allen, Staff Engineer. It was moved and seconded (Boyd/Singh) to open a case. The motion passed unanimously. There was no further discussion.

New Business

Investigator Position

Ms. Lopez updated the LEC on the results of her research conducted with other state boards. For informational purposes, she also included the position description for the current investigators (Compliance Specialist 2), along with the state classification and salary information. For additional consideration, Ms. Lopez provided information for the state's investigator 1 and 2 positions, the state's professional land surveyor 1 and 2 positions, and the statewide policy for a professional surveyor's license differential in pay that applies to employees at the Department of Forestry. AAG Lozano suggested reviewing the position description for the Medical Board Director. Although the pay rate for the Medical Board Director is of a licensed physician rather than a professional land surveyor, the position description would contain the discretion in duties that is more similar to the functions the Board is requesting of this potential position. After discussion, Ms. Lopez will move forward as directed during the July Board meeting.

The meeting adjourned at 4:58 p.m.