

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

BRYAN A. NELSON, AN INDIVIDUAL  
abn NELSON PLUMBING,

RESPONDENT.

)  
) NOTICE OF PROPOSED ASSESSMENT  
) OF A CIVIL PENALTY AND FINAL  
) ORDER ON DEFAULT

)  
) CASE NO. C2014-0223  
)

Under Oregon Revised Statutes (ORS) 455.895(1)(a) and Oregon Administrative Rules (OAR) 918-001-0036, the State Plumbing Board (Board) proposes disciplinary action against Respondent in the form of civil penalties totaling \$6,000 for violations of Building Codes Division statutes or rules as follows:

FINDINGS OF FACT

1. At all relevant times Respondent's plumbing contractor license (PB775) and journeyman plumber license (7296JP) were expired but renewable.
2. During or about August 8, 2014, through August 16, 2014, at 3627 SE Belmont Street, Portland, Oregon, Respondent cut through walls and floors, attached pipes and connected drains and plumbing fixtures for a new bathroom in a residence for the account of another prior to obtaining a plumbing permit.
3. The property owner subsequently hired a licensed plumbing contractor that obtained a plumbing permit and corrected all work completed by Respondent.

APPLICABLE LAW

1. ORS 447.010(6) defines plumbing to include the art of installing, altering or repairing in or adjacent to or serving buildings pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried waste, including the water supply distributing pipes.
2. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or purport to be a plumbing contractor, and a member or employee of a firm, partnership or corporation may not engage<sup>1</sup> in the layout or superintending of plumbing installations, without having obtained the plumbing contractor license.
3. Under ORS 693.030(1)(a), a person may not engage in the trade of journeyman plumber without a journeyman plumber license.

<sup>1</sup> OAR 918-030-0010(8) states that for purposes of ORS 447.040, 479.620, 480.630 and any other license regulated by ORS chapter 455, "engaging in the business" means to advertise or solicit, contract or agree to perform, or to perform, work for which a license or permit is required under Oregon law, including but not limited to a single instance.

**FINAL ORDER**

As of: December 31, 2014

- 1 4. Under OAR 918-785-0200(1)(a), no person, firm, or corporation shall perform plumbing  
2 without first obtaining a plumbing permit or minor label when required and paying the  
3 appropriate fees to the authorized permit issuing agency.

### 4 CONCLUSIONS OF LAW

- 5 1. Attaching pipes and connecting drains and plumbing fixtures for a new bathroom in a  
6 residence is plumbing as defined in ORS 447.010(6).  
7 2. By engaging in the business of plumbing contracting without having an active plumbing  
8 contractor license, Respondent violated ORS 447.040(1).  
9 3. Respondent engaged in the trade of journeyman plumber by attaching pipes and  
10 connecting drains and plumbing fixtures for the account of another without having an  
11 active journeyman plumber license, in violation of ORS 693.030(1).  
12 4. Respondent performed plumbing without first obtaining a plumbing permit, in violation  
13 of OAR 918-785-0200(1)(a).

### 14 ORDER

15 Under ORS 455.895(1)(a) and OAR 918-001-0036, the State Plumbing Board assesses  
16 the following:

- 17 1. a \$3,000 civil penalty for violating ORS 447.040(1);  
18 2. a \$2,000 civil penalty for violating ORS 693.030(1);  
19 3. a \$1,000 civil penalty for violating OAR 918-785-0200(1)(a).

20 The civil penalties assessed total \$6,000.

### 21 NOTICE OF RIGHT TO HEARING

22 Respondent is entitled to a hearing as provided by the Administrative Procedures Act,  
23 Oregon Revised Statutes, chapter 183. If Respondent requests a hearing, the request must be in  
24 writing and postmarked no later than 20 days from the service date. If this notice was served to  
25 Respondent in person, the service date is the date Respondent received this notice. If this notice  
was served through the mail, the service date is the day the notice was mailed, not the day  
Respondent received it.

If a request for hearing is not received within 20 days, Respondent's right to a hearing is  
considered waived. Mail hearing requests to Building Codes Division, Enforcement Section,  
P.O. Box 14470, Salem, Oregon, 97309.

Respondent has the right to be represented by legal counsel. ORS 183.457 provides that a  
corporation may be represented by an authorized representative at the hearing. If Respondent  
requests a hearing, Respondent will be notified of the time and place of the hearing and be given

1 information on procedures, right of representation and other rights of parties relating to the  
2 hearing before it begins.

### 3 NOTICE TO ACTIVE DUTY SERVICE MEMBERS

4 Active duty service members have a right to stay proceedings under the federal  
5 Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon  
6 Military Department at 800-452-7500 for more information. If you need help finding legal  
7 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator  
8 website at <http://legalassistance.law.af.mil/content/locator.php>.

### 9 NOTICE OF FINAL ORDER

10 If Respondent does not request a hearing within 20 days, withdraws a hearing request,  
11 notifies the Director of the Department of Consumer and Business Services (Director) or the  
12 administrative law judge that they will not appear, or fails to appear at a scheduled hearing, the  
13 Director will issue a Final Order by Default. If the Director issues a Final Order by Default, it  
14 designates the file, including any materials submitted by Respondent that relate to this matter, as  
15 the record for purpose of proving a prima facie case.

16 Respondent is entitled to judicial review of any final order issued in the matter of this  
17 Notice of a Proposed Assessment of a Civil Penalty. Judicial review may be obtained by filing a  
18 petition for review with the Oregon Court of Appeals within 60 days after the Final Order is  
19 served. See ORS 183.482. If the order was served in person, the service date is the date  
20 Respondent received the order. If the order was served through the mail, the service date is the  
21 day the order was mailed, not the day it was received by Respondent. If Respondent does not file  
22 a petition for judicial review within 60 days, Respondent will lose the right to appeal. The phone  
23 number for the Oregon Court of Appeals is 503-986-5555.

24 Dated this 10<sup>th</sup> day of December, 2014

25 Andrea Simmons for

Chair  
State Plumbing Board  
State of Oregon