

BEFORE THE STATE PLUMBING BOARD OF THE STATE OF OREGON

IN THE MATTER OF:

NOTICE OF PROPOSED ASSESSMENT
OF CIVIL PENALTIES

GARY M. POLACEK, DBA GARY M.
POLACEK CONSTRUCTION,
AN INDIVIDUAL,

NOTICE OF FINAL ORDER ON DEFAULT

RESPONDENT.

BCD CASE C2015-0167

FINAL ORDER

As of: December 14, 2015

**IF YOU DO NOT REQUEST A HEARING IN WRITING WITHIN 20 DAYS
OF THE POSTMARK DATE OF THIS NOTICE,
THIS NOTICE WILL BECOME A FINAL ORDER.**

More information about this Notice and how to request a hearing is included below.

Pursuant to Oregon Revised Statutes (ORS) 455.895(1)(a) and Oregon Administrative Rules (OAR) 918-001-0036, the State Plumbing Board of the State of Oregon (Board) proposes to assess civil penalties totaling \$6,000.00 against Gary M. Polacek, dba Gary M. Polacek Construction (Respondent), because Respondent violated Building Codes Division (Division) statutes and rules as identified below.

FINDINGS OF FACT

1. On or around June 19, 2015, Respondent performed the following work at the residence of Mr. Ronald Renwick, located at 670 Village Pines Drive, Coos Bay, Oregon 97420 (Renwick property):
 - a. Installation of two bathroom faucets, including connecting the faucets to water supply lines; and
 - b. Installation of a kitchen sink, including connecting the sink to water supply lines and a drain pipe.
2. At no relevant time did Respondent hold either a journeyman plumber or plumbing

1 contractor license.

2 3. Respondent did not obtain a plumbing permit prior to performing the aforementioned work.

3 **APPLICABLE LAW**

4 1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 447.010(1)-(6),
5 ORS 455.010(1)-(10), ORS 693.010(1)-(5), OAR 918-001-0005(1)-(4), OAR 918-030-
6 0010(1)-(11), and OAR 918-690-0420(1)-(14).

7 2. Under ORS 447.010(6), plumbing is defined as the art of installing, altering, or repairing
8 pipes, fixtures, and other apparatus for bringing in the water supply and removing liquid and
9 water-carried waste.

10 3. Under OAR 918-780-0065, no person, firm, or corporation shall do plumbing work in the
11 State of Oregon without first obtaining a plumbing permit or minor label when required and
12 paying the appropriate fees to the authorized permit issuing agency.

13 4. Under ORS 447.040(1), a person may not work as a plumbing contractor, or advertise or
14 purport to be a plumbing contractor, without having obtained a plumbing contractor license.

15 5. Under OAR 918-030-0010(8), for purposes of ORS 447.040... "engaging in the business"
16 means to advertise or solicit, contract or agree to perform, or to perform, work for which a
17 license or permit is required under Oregon law, including but not limited to a single
18 instance.

19 6. Under ORS 693.030(1), a person may not engage in the trade of journeyman plumber
20 without a journeyman plumber license.

21 **CONCLUSIONS OF LAW**

22 1. The following constitute plumbing under ORS 447.010(6):

23 a. Installation of faucets, including connecting faucets to water supply lines; and

24 b. Installation of a sink, including connecting the sink to water supply lines and a drain
25 pipe.

- 1 2. By performing the aforementioned plumbing work, Respondent engaged in the trade of
2 journeyman plumber.
- 3 3. By engaging in the trade of journeyman plumber without a journeyman plumber license,
4 Respondent violated ORS 693.030(1).
- 5 4. By performing the aforementioned plumbing work without first obtaining a plumbing
6 permit, Respondent violated OAR 918-780-0065.
- 7 5. By performing the aforementioned plumbing work, for which a license and permit were
8 required under Oregon law, Respondent engaged in the business of plumbing contractor
9 under OAR 918-030-0010(8).
- 10 6. By working as a plumbing contractor without having obtained a plumbing contractor
11 license, Respondent violated ORS 447.040(1).

12 ORDER

13 Pursuant to ORS 455.895(1)(a) and OAR 918-001-0036, the Board assesses a total of
14 \$6,000.00 in civil penalties as follows:

- 15 1. \$2,000.00 for violating ORS 693.030(1);
- 16 2. \$1,000.00 for violating OAR 918-780-0065; and
- 17 3. \$3,000.00 for violating ORS 447.040(1).

18 NOTICE OF RIGHT TO HEARING

19 Respondent is entitled to a hearing as provided by the Administrative Procedures Act, ORS
20 chapter 183. If Respondent requests a hearing, the request must be in writing and postmarked no
21 later than 20 days from the date of service of this Notice. If the Notice was served on Respondent in
22 person, the date of service is the date Respondent received the Notice. If the Notice was served
23 through the mail, the date of service is the day the Notice was mailed, not the day it was received by
24 the Respondent. If a request for hearing is not received within the 20-day period, Respondent's right
25 to a hearing shall be considered waived. Mail hearing requests to Building Codes Division,

1 Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

2 Respondent may be represented by legal counsel. Pursuant to ORS 183.457 and OAR 918-
3 001-0030, a corporate Respondent may be represented by an authorized representative at the
4 hearing. If Respondent requests a hearing, Respondent will be notified of the time and place of the
5 hearing. The Division will give Respondent information on the procedures, right of representation,
6 and other rights of parties relating to the conduct of the hearing before the commencement of the
7 hearing.

8 NOTICE TO ACTIVE DUTY SERVICEMEMBERS

9 Active duty servicemembers have a right to stay proceedings under the Federal
10 Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon
11 Military Department at 800-452-7500 for more information. If Respondent needs help finding legal
12 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at
13 <http://legalassistance.law.af.mil/content/locator.php>.

14 NOTICE OF FINAL ORDER

15 This Notice will become a final order by default if Respondent does any of the following:
16 fails to request a hearing in writing within 20 days from the date of service of this Notice;
17 withdraws a hearing request; notifies the Building Codes Division or the administrative law judge
18 that Respondent will not appear at a scheduled hearing; or fails to appear at a scheduled hearing. If
19 this Notice becomes a final order by default, the Division's file on the matter, including all
20 materials submitted by Respondent, becomes the record for the purpose of establishing a prima
21 facie case.

22 RIGHT TO JUDICIAL REVIEW

23 Respondent is entitled to judicial review of a final order in this matter. Judicial review may
24 be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after a
25 final order is served upon Respondent. See ORS 183.482. If a final order is served on Respondent in

1 person, the date of service is the date Respondent receives the order. If a final order is served
2 through the mail, the date of service is the day the order is mailed, not the day it is received by the
3 Respondent. If Respondent does not file a petition for judicial review within the 60-day time
4 period, Respondent will lose the right to appeal. The phone number for the Oregon Court of
5 Appeals is 503-986-5555.

6 **FOR THE STATE PLUMBING BOARD OF THE STATE OF OREGON**

7 Andrea Simmons
8 Chair
9 State Plumbing Board
10 State of Oregon

11 Date: ^(as) 12-11-20-15

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