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4                   BEFORE THE OREGON STATE BOARD OF EXAMINERS  
5                   FOR ENGINEERING AND LAND SURVEYING

6 In the Matter of:

7 John Michael Nissen

Case No. x0035

FINAL ORDER BY DEFAULT

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9           On or about May 19, 2020, the Oregon State Board of Examiners for Engineering and  
10 Land Surveying (Board) properly served a Notice of Intent to Assess a Civil Penalty (Notice) on  
11 John Michael Nissen (Nissen). The Notice assessed a civil penalty in the amount of \$1,500, and  
12 it designated the Board file on this matter as the record for purposes of establishing a *prima facie*  
13 case upon default. Nissen did not request a hearing. Therefore, upon consideration of the facts  
14 and law, the Board enters the following Order:

15                   **FINDINGS OF FACT AND ULTIMATE FACTS**

- 16 1. At all relevant times, Nissen was a licensed engineer, registration number 18702PE.  
17 2. On or about December 26, 2018, Nissen applied to renew his license, claiming on his  
18 renewal application that he had obtained 24.5 hours of continuing professional development  
19 during the 2017-2018 biennium, and carried over an additional 11.5 hours from the 2015-  
20 2016 biennium, for a total of 36.0 hours to qualify for renewal.  
21 3. OSBEELS renewed Nissen's license on December 31, 2018.

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- 1 4. On or about January 28, 2019, the Board notified Nissen that it was auditing the continuing  
2 professional development (CPD) hours he claimed to have obtained during the 2017-2018  
3 licensing biennium, as well as the CPD hours he carried over from the 2015-2016 biennium.  
4 In the notice of audit, OSBEELS requested Nissen provide documentation of the CPD hours  
5 he had claimed for the 2017-2018 period, which included units carried-over from the 2015-  
6 2016 period. Nissen did not respond.
- 7 5. On or about March 29, 2019, OSBEELS sent Nissen a second notice of his audit, with  
8 request for documentation. Nissen failed to respond to this second notice.
- 9 6. On or about May 3, 2019, OSBEELS sent Nissen a third and final notice requesting  
10 documentation for the audit. On May 9, 2019, Nissen emailed OSBEELS, writing that he had  
11 received three audit notices, and that he had completed the required continuing education, but  
12 that because his record keeping is “substandard,” he would be unable to provide the  
13 requested documentation for all units.
- 14 7. On or about May 10, 2019, OSBEELS followed-up with Nissen, outlining what types of  
15 supporting documentation would be accepted as evidence of completed PDH units. Nissen  
16 did not respond to this communication.
- 17 8. On or about June 20, 2019, OSBEELS followed-up again with Nissen, requesting supporting  
18 documentation by July 8, 2019. Nissen responded that same day, “confirming receipt” of the  
19 communication but he did not provide any supporting documentation.
- 20 9. On or about August 29, 2019, OSBEELS contacted Nissen via letter to inform him that Case  
21 No. x0035 had been opened against him for his failure to comply with the audit.

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- 1 10. On or about September 6, 2019, Nissen responded, that he attended the ASCE/SEI  
2 convention in Fort Worth, Texas, and provided receipts for the convention registration,  
3 airfare, and hotel accommodations in Fort Worth, Texas. OSBEELS staff verified that 10.5  
4 CPD hours were provided for attending the ASCE/SEI convention sessions.
- 5 11. On or about September 6, 2019, Nissen also responded by writing that he had viewed SE  
6 University Web seminars for continuing education and provided receipts for his 2019 and  
7 2018 annual subscription renewal payments to SE University.
- 8 12. On or about January 7, 2020, Nissen submitted a receipt for his 2017 SE University annual  
9 subscription.
- 10 13. On or about January 21, 2020, Nissen submitted a receipt for his 2016 and 2015 SE  
11 University annual subscriptions.
- 12 14. The receipts Nissen provided for the ASCE/SEI convention registration, airfare, and hotel  
13 accommodations in Fort Worth, Texas, documented his attendance at that convention.
- 14 15. The receipts Nissen provided for the annual SE University subscriptions demonstrated only  
15 that Nissen had subscribed to an online service that gave him the *opportunity* to view one or  
16 more Web seminars. They were not payment receipts confirming he had, in fact, viewed any  
17 of the Web seminars available. A person can purchase an SE University Web seminar  
18 subscription without viewing any of the seminars or ever logging into the service.

19 **APPLICABLE LAW**

- 20 1. OAR 820-020-0015(8), a rule of professional conduct, provides that Registrants or applicants  
21 for registration or certification shall cooperate with the Board on all matters subject to the  
22 Board's jurisdiction.

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- 1     2. ORS 672.255(1)(f) gives the Board authority to prescribe standards and educational  
2       qualifications for renewal, in addition to those specified under ORS 672.002 to 672.325.
- 3     3. Under the authority of ORS 672.255(1)(f), OAR 820-010-0635(1)(a) requires registrants to  
4       obtain 30 CPD hours during each biennial registration period, and requires those same 30  
5       CPD hours to have been obtained in order to renew for the next biennial registration period.
- 6     4. OAR 820-020-0015(7), a rule of professional conduct, requires registrants to continue their  
7       professional development throughout their careers.
- 8     5. OAR 820-010-0635(1)(a) provides that every registrant is required to obtain 30 PDH units  
9       during each biennial registration period and in order to renew for the next biennial  
10      registration period.
- 11    6. OAR 820-010-0635(1)(e) requires registrants to submit supporting documentation to verify  
12      CPD hours claimed, when audited by the Board. Specifically, it requires evidence of  
13      attendance (completion certificates, paid receipts, attendance logs, or other documents  
14      supporting evidence of attendance).
- 15    7. OAR 820-010-0635(1)(g) requires registrants to retain their CPD documentation for five  
16      years.
- 17    8. Under ORS 670.325(1), the Board may impose a civil penalty of up to \$1,000 per violation  
18      of its laws and rules.
- 19    9. Under ORS 672.200(6), the Board may suspend, revoke, or refuse to issue, restore, or renew  
20      a certificate or permit, or may reprimand an individual enrolled as an intern or holding a  
21      certificate or permit for violating a rule of professional conduct prescribed by the board.

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## CONCLUSIONS OF LAW

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2 1. Because Nissen's SE University receipts demonstrated only that he subscribed to general  
3 access to a continuing education service provider, not that he attended any of the seminars  
4 claimed, they were not paid receipts showing attendance. He therefore failed to submit  
5 supporting documentation during the Board's audit of the CPD he had claimed, to verify 19.5  
6 CPD hours claimed on his 2018 license renewal. He thereby violated OAR 820-010-  
7 0635(1)(e).
- 8 2. Because Nissen failed to demonstrate that he obtained 19.5 of the of the 30 CPD hours he  
9 claimed for the 2017-2018 biennium, he violated OAR 820-010-0635(1)(a).
- 10 3. Nissen thereby also failed to continue his professional development throughout that biennium  
11 of his career, thereby also violating OAR 820-020-0015(7).
- 12 4. Because Nissen failed to provide documentation requested by the Board on January 28, 2019;  
13 March 29, 2019; and June 20, 2019, Nissen failed on three occasions to cooperate on matters  
14 subject to the Board's jurisdiction. Thus, Nissen violated OAR 820-020-0015(8) three times.
- 15 5. By the violations above, Nissen subjected himself to civil penalties of up to \$1000 per  
16 violation.
- 17 6. By failing to satisfy his continuing professional development requirements, Nissen subjected  
18 his license to suspension and a refusal to renew that license.
- 19 7. By violating rules of professional conduct, Nissen subjected his license to discipline, up to  
20 and including revocation.
- 21 8. The Board may, without amending its notice, impose civil penalties against Nissen of up to  
22 \$6,000, and may impose discipline on his professional engineering license up to and  
23 including revocation.

1 9. The Board proposes to assess a civil penalty against Nissen in the total amount of \$1,500,  
2 divided as follows:

- 3 • \$1,000 for violating OAR 820-010-0635(1)(a) & (e), and OAR 820-020-0015(7); and
- 4 • \$500 for three (3) violations of OAR 820-020-0015(8).

5 **ORDER**

6 For his violations of OAR 820-010-0635(1)(a) & (e), OAR 820-020-0015(7), and OAR  
7 820-020-0015(8), for the reasons detailed above, the Board HEREBY assesses a civil penalty  
8 against Nissen in the amount of \$1,500.

9 DATED this 14<sup>th</sup> day of July, 2020.

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Daren L. Cone, PE, PLS, President  
Oregon State Board of Examiners for  
13 Engineering and Land Surveying

14 **NOTICE**

15 Civil penalties, if unpaid, may be recorded and filed with the county clerks as liens against  
16 property 10 days after the expiration of the statutory appeals period (70 days after issuance of  
this order). Make checks payable to the Oregon State Board of Examiners for Engineering and  
Land Surveying.

17 **APPEAL RIGHTS**

18 You are entitled to judicial review of this order in accordance with ORS Chapter 183.482. You  
19 may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon  
20 within 60 days from the date of service of this order.