



Oregon Geologist Examiner

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Next Board Meeting:

March 10, 2003

The Association Center
Salem, Oregon

Board Closes Case Against Unregistered Professor

A recent case brought before the Board involved an unregistered geology professor allegedly engaging in the public practice of geology. The complaint arrived in February 2002. Upon receipt of a response from the unregistered geologist, a member of the Board began a technical review of the case to determine whether any of the work done constituted the practice of geology. The Compliance Committee met in late May to consider the technical reviewer's recommendation. At the close of the Compliance Committee Meeting, the Board offered the unregistered geologist an opportunity to enter into an agreement to close the case by signing a Consent Order. The Consent Order stated that the practice of geology includes the evaluation and interpretation of geological work performed by others. It stated that the unregistered geologist admits no wrong, but that by signing the Consent Order, he agreed to comply with Oregon law by obtaining appropriate signatures and seals of Registered Geologists for work considered by the Board to be the practice of geology. In addition, the Board encouraged him to seek registration as a Registered Geologist in the state of Oregon. The unregistered geologist requested a delay until August 30 to consider his options. Through his attorneys, he claimed that the Board could not sanction him because his constitutional right to speak and write on any subject protected his conduct.

Ultimately, the unregistered geologist's attorney notified the Board that he would not sign the Consent Order. The Board again began discussions with the assistant attorney general advising the Board at the September 11, 2002, meeting. Board counsel made a recommendation for Board action that was scheduled to be considered at the Board's meeting on December 3, 2002, and expected to bring the case to closure.

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Board Elects New Leadership

At the December 3, 2002, meeting of the Board, David Michael was elected President and Gary Peterson was elected vice-president of the Board. The position is for one year.

Michael was recently appointed to his second three-year term with the Board. He was originally appointed in November of 1999. The State of Oregon, Department of Forestry, employs him. He has served on the Council of Examiners (COE) of the National Association of State Boards of Geologists (ASBOG) and was the Board's delegate to the 2001 national meeting held in Pittsburgh, Pennsylvania.

Peterson is in his first term having been appointed in November of 2000. He is a Certified Engineering Geologist with Squier Associates, Lake Oswego. Peterson has also served on the COE of ASBOG and was the Board's delegate to the 2002 national meeting in Biloxi, Mississippi.

Knight's Notes

On a daily basis, registrants call to change their address over the telephone. To some of you, hopefully many of you, this statement will sound like a broken recorder:

You must send your address change in writing. But no matter how many times this information has been printed in the newsletter, it is not reaching some of you. Perhaps because you failed to change your address in a timely fashion you have missed out on the newsletters and have not had the opportunity to know that **you must send your address change in writing.** This can be US mail, fax, or email.

Oregon's October 4, 2002, examination site had a California connection. Due to budget constraints, the California Board chose to offer the national ASBOG examination only in the spring. This left Californians interested in sitting for the examination scrambling for assistance. The closest states offering the ASBOG examination were Oregon and Arizona. Although the Oregon applicant pool could have ballooned substantially due to this change, the effect on our site was minimal. Approximately half at each test site were Californians. And our exam site generally has had a few candidates with California addresses. The exam sites in California generally run upwards of 150 candidates. Imagine the surprised Californians when they had 15 or 20 at the Oregon site!

Please take a few moments to read the newsletter. The information should be of use to you.

Happy New Year to each of you.

Susanna Knight
Administrator

ASBOG Selects New President

Dorian Kuper, RG, CEG, Tualatin, Oregon, was selected as the President of the National Association of State Boards of Geologists (ASBOG). Her one-year term is effective January 1, 2003. Ms. Kuper has previously served as the Secretary and the Treasurer of the national body. Prior to her election to the Executive Committee, she served as a participant in the Council of Examiners and as a delegate to the national meeting.

Kuper served on the Oregon State Board of Geologist Examiners for seven years, which included a one-year exten-

sion of the appointment. During her tenure with the Board, she facilitated a major change for the Board. In severing its partnership with the Engineering Board, Kuper located new office space and assisted in hiring a Geology Board administrator. She was instrumental in the smooth transition of this process while serving as the Board Chairperson.

Other members of the ASBOG Executive Committee include: Darrell W. Schmitz, Past President, Mississippi; Duane A. Eversoll, President Elect, Nebraska; Treasurer, Andrews L. Tolman, Maine; Gabrielle M. Enos, Secretary, Florida. The Executive Committee meets four times each year. Two of those meetings are in conjunction with the Council of Examiners (COE), the body that prepares the National ASBOG examination.

Board Addresses Stamping Issue... Again!

Just when you thought it was a good idea to leave the office and have a co-worker or supervisor sign your geology work document in your absence, think again. A document involving the public practice of geology prepared by a Registered Geologist, or a subordinate under the direction of a Registered Geologist, must be signed by the Registrant responsible for its contents (the preparer Registrant or the Registrant "in charge"). In the case of such a Registered Geologist's absence (because of vacation, illness, or other obligation) at the time of report production and submittal, the document cannot be signed by another registrant or non-registrant superior, who is not responsible for the document's content. While signing and/or stamping geology work for a co-worker, subordinate, or superior may have been a common and convenient practice with your firm until now, it is clearly in violation of the public practice of geology in Oregon.

Reports prepared that include geology work shall be signed and stamped by the preparing Registered Geologist or the Registered Geologist who supervised the work, in accordance with Oregon Revised Statute (ORS) 672.605. If another registrant signs your document in your stead, then that registrant claims legal and professional responsibility for that document. In conclusion, before you leave for that long-deserved vacation in Tahiti or a conference in Baltimore, plan to manage the signature and stamping of your geology work documents before you leave or upon your return.

Board Reaches Agreement with Johnson

In a Public Meeting of the Oregon State Board of Geologist Examiners held in Salem on September 11, 2002, it was unanimously voted that the Board should establish a written agreement with Rick I. Johnson, DBA DeMinimis Incorporated Environmental Management, Gresham, Oregon. In such agreement, Johnson, who is not a geologist registered with the Board:

- 1) will agree to not engage in *the public practice of geology* unless he registers with the Board;
- 2) will henceforth have all reports, which may contain information considered to be *the public practice of geology* in the State of Oregon, prepared under the direct supervision of, and stamped by, an Oregon Registered Geologist; and
- 3) will not be disciplined by the Board for any additional reports which, in the Board's opinion, may include the public practice of geology and that were signed by him prior to a personal meeting with a committee of the Board on July 29, 2002.

Board Signs Consent Order with Gray

The OSBGE is responsible for regulating the practice of geology and issuing certificates of registration to geologists in Oregon, including certifications in specialties. Engineering geology is one the specialties requiring certification.

John H. Gray, RG, holds a certificate of registration to practice as a geologist in the State of Oregon. Gray is not certified as an engineering geologist, but as a registered geologist, Gray is eligible for certification in a specialty.

On March 11, 2002, the Board met and discussed two complaints received by the Board involving reports performed by Gray. After reviewing ORS 672.505(3) and ORS 672.525(7), the Board raised concerns that these reports required the signature and seal of a Certified Engineering Geologist (CEG), and moved and voted unanimously to establish a written agreement with Gray.

In order to address the concerns of the Board, Gray agrees that he:

- 1) will not practice engineering geology until such time as he has become registered with the Board by passing the examination for his certified engineering geologist specialty;

- 2) will have any engineering work that he prepares and considered to be *the public practice of engineering geology* stamped by an Oregon CEG;
- 3) will work as a subordinate to a CEG;
- 4) will seek to complete the registration process as a GEG in Oregon by sitting for and passing the CEG test at the earliest possible date, but not later than March 30, 2003; and
- 5) will not need to acquire additional mentoring prior to sitting for the CEG examination.

Gray denies that he performed work that amounts to the practice of engineering geology. The Board does not agree. However, in order to resolve this matter, the parties enter into the agreement without resolving this point of disagreement.

Welcome New Registrants

The Board congratulates the following new Certified Engineering Geologists effective November 25, 2002.

Daniel Brent Meier, E1967
Ryan Travis House, E1914

The Board also congratulates the following additions to the Registered Geologist's roster for the state of Oregon effective December 13, 2002.

Mary A. Amann, G1957
Erick R. Burns, G1864
Kevin R. Knapp, G1796
Robert A. Lauritzen, G1945
Jinsuk C. Park, G1861
Michael K. Schroeder, G1230

Congratulations also go out to the following Geologist in Training (GITs), who were added to the Board roster effective December 13, 2002:

Daniel E. Becraft, T1974
Daniel A. Bunk, T1975
Craig D. Burns, T1976
Jennifer J. Callison, T1977
Christy L. Confar, T1978
Meredith A. Gibson, T1979
Eric W. Heller, T1980
Colin C. Polk, T1981
James D. Robinson, T1982
Jeffrey K. Schatz, T1983
Sara K. Sjostrom, T1984
Erik Skov, T1985

Case Against Professor Closed

(continued from page 1)

On November 20, less than two weeks before the Board's December meeting, the unregistered geologist filed a lawsuit that required immediate action. During the investigative process legal counsel advised that, in this unique instance, the constitutional right of free speech and the associated right to write freely on any subject made it difficult to determine whether a violation had occurred. The preemptive lawsuit "forced the issue." Due to the complexity of the legal issues, the Board perceived significant risk in pursuing this case.

In addition to the close constitutional questions, other circumstances suggested a measured response. The unregistered geologist had no prior history of complaints. He did not claim to be a Registered Geologist. His actions focused on his personal concerns, related to property he owned, and not primarily on public health or safety issues. The Board could not conclude that the health or safety of life or property was imperiled by the work of the unregistered geologist. Under these circumstances, and with advice from the Board's attorney, the Board decided to dismiss the matter with no further action.

This case also highlighted issues with respect to the Board's rule on public testimony. Again, on attorney's advice, the public testimony rule was rescinded. The Board evaluates whether activity by unregistered persons constitutes the public practice of geology, and not whether testimony relates to geology.

The case also highlighted the responsibility and authority of quasi-judicial boards, such as land use boards, to evaluate and consider all testimony, including written submittals. These boards have the right and the responsibility to consider whether an individual's testimony has merit based, in part, upon the individual's professional qualifications.

The Board continues to focus on violations that include the public practice of geology by unregistered individuals, with the definition of public practice drawn from Oregon Revised Statute 672.505(7). The Board remains committed to protecting the public by ensuring that only registered geologists engage in the public practice of geology. The Board also acknowledges the rights of Oregonians to speak out on subjects of concern. The Board's decision in this case was a difficult one. The attorney for the Board believes that the Board wisely balanced the free speech rights of Oregonians with the obligation to protect the public from those who are not qualified to engage in the public practice of geology.

Board Closes Compliance Cases

At the September 11 and December 3, 2002, Board Meetings, action resulted in the closing of numerous compliance cases.

A Registered Geologist issued a complaint against a non-registered individual for publicly practicing geology without registration. After a review of the case, a Compliance Committee meeting was scheduled to hold discussions with the non-registrant. The Board was able to communicate their concern about the work that had been done. At the subsequent Board Meeting, a motion was unanimously passed to issue an AGREEMENT with the non-registrant to cease the public practice of geology. If said individual practices again without registration, he could be subject to the civil penalty clause of the Board's statutes. [See related article on page 3 -- *Johnson*].

In a second compliance action, a LETTER OF CONCERN was issued to a registrant of the Board. The Board communicated that ORS 672.605 clearly states that any documents must be "signed by the registered geologist and impressed with the seal". The Board stated that it is the registrant's responsibility to complete paperwork in such a timeframe that they are available to sign and stamp the finished document.

Another LETTER OF CONCERN was issued to a Registered Geologist. The poor quality report writing was the issue. The Board clarified that state agencies must reject reports that do not meet the standard they require.

In a Special Meeting held on November 22, 2002, a compliance case was dismissed. [See story page 1] In addition, as a result of the Board's attorney's review of Administrative Rules, a Temporary Rule has rescinded the Public Testimony (OAR 809-030-0050) effective December 2, 2002. Permanent rule change information will be forthcoming.

A CONSENT ORDER was also signed closing cases in which a Registered Geologist was cited for the practice of engineering geology without the proper certification. [See related article, page 3 -- *Gray*.]

PUBLIC RULES HEARING

March 10, 2003

Conference Room B -- 1:00 PM
The Association Center, Salem, Oregon

OAR 809-050-0030: Public Testimony Rule

*The Temporary Rule suspending this rule expires June 2.
A permanent rule change must be submitted by that date.*

University Outreach Board Priority

In establishing *Long-Term Goals* for the Board, reaching the university community has been identified. Although the Board has been sending meeting notices and newsletters to University contacts for well over a year, the Board recently received their first invitation to visit a university classroom and report about the work of the Board.

Oregon State University Professor Bob Lillie extended an invitation to the Board to present information to a seminar class entitled "Geosciences: From Student to Professional". In particular, Professor Lillie was interested in covering topics such as certification and serving as expert witnesses. Chairman of the Board, William Orr, Emeritus Geology Professor from the University of Oregon, attended the class on behalf of the Board. Following the class meeting, Orr met with a group of university professors interested in discussing registration and the experience requirement.

It is important that university students are aware of the registration process. In Oregon, they are eligible to sit for the fundamental section of the examination upon completion of their degree. Many students are unaware of this opportunity and only "discover" registration upon landing a job and being informed that they must become registered.

The Board is quite willing to visit university classrooms to enlighten students about registration and encourage them to sit for the examinations. Please direct any requests to the Board office.

National Exam Faced Court Challenge

During the November 9, 2002, annual business meeting of the National State Boards of Geology held in Biloxi, Mississippi, the Boards were informed of a recent court case challenging the national examination. A spring

2002 candidate in Florida, having failed the examination for the third time, brought the challenge.

Seventeen questions were challenged. As part of defending any examination, proof must be provided that not only is the correct answer correct, but why the three distracters (incorrect answers) are indeed incorrect. Both an expert witness and one of the Board's psychometricians were present. ASBOG's expert witness has been involved with the examination since its inception.

First the Judge heard the process involved for compiling and scoring one examination. He then heard the defense for the correct answer for one question. Based on these two presentations, the case was dismissed. ASBOG considers the failure of this challenge to be a landmark case, as it validates that the Council of Examiners (COE) is preparing a very defensible examination. The state of Florida paid approximately \$22,000.00 to defend the examination.

Task Force to be Established

At the September 2002 Board Meeting, a motion was unanimously passed to establish a Task Force on developing guidelines for preparing hydrogeology reports. Board Member Eileen Webb was appointed to chair the Task Force.

Many states are including a separate license for the practice of hydrogeology, including our neighboring states to the north and south. The practice of hydrogeology in Oregon is regulated by the geology registration. However, those individuals practicing hydrogeology must have training, knowledge and experience in the field of hydrogeology.

If you are a hydrogeologist and would be interested in working with the Task Force, please indicate so by emailing the Board office: osbge@osbge.org. A small committee will be selected for the initial discussions.

All of Us Wish You...



**Oregon State Board of
Geologist Examiners**
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Lapsed Licenses

During the months of July, August, and September of 2002, licenses lapsed for the seven registrants listed below. If your name is listed below and you *did* pay your renewal fee, please contact the Board office so the database can be corrected. Otherwise, those listed are not allowed to practice geology in the state of Oregon until their registration is brought current.

Block, Erik M., G1145; **Brown**, Larry K., G1818;
Carter, Stephen J., G1585; **Hayman**, Glenn A.,
G1141; **Lewis**, Jerry D., G894; **Metcalf**, Joel G.,
E1663; **Vonder-Haar**, Stephen P., G1586.

In addition, Board records indicate that 27 registrants did not renew in October 2002 and five did not renew in November 2002. Those names will be printed in the next edition of the newsletter. If your renewal month is October or November, please check your wallet card to confirm you are current with your registration.

As of February 2002, the Restoration Fee has been changed. The \$10 late fee is required when renewal payment is received within 90 days from the due date. If payment is postmarked between 90 and 179 days, the fee is \$50. A \$100 fee is required when renewal payment is received after 179 days from the due date.

2003 Calendar of Upcoming Events

- March 7: National ASBOG Examination
8:00 AM – Fundamental Section
1:00 PM – Practice Section
The Association Center, Salem, Oregon
- Oregon Geology Exam
6:00 PM to 8:00 PM
The Association Center, Salem, Oregon
- CEG Examination
8:00 AM to Noon
The Association Center, Salem, Oregon
- March 10: Rule Hearing: Public Testimony Rule, 1:00 PM
The Association Center, Salem, Oregon, Rm B
- March 10: Quarterly Board Meeting, Conference Room B
The Association Center, Salem, Oregon
- June 6: Oregon Geology Examination
The Association Center, Salem, Oregon
- Postmark Deadline** for Fall National Exams
- June 9: Quarterly Board Meeting
- October 3: Fall Date for National Exams