



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting

February 13, 2014

Members Present:

Carl Tappert, Chair

Steven Burger

Shelly Duquette

Ron Singh

Staff Present:

Mari Lopez, Administrator

Jenn Gilbert, Executive Assistant

Jason Abrams

Joy Pariante

Monika Peterson

James R. (JR) Wilkinson

Others Present:

Katharine Lozano, Assistant Attorney General

Jason Kent (Observer)

Jack Watson (Respondent)

Tracy Watson (Respondent's daughter)

A meeting of the Law Enforcement Committee was called to order at 8:10 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

Public Comment

There was no public comment; however, AAG Lozano suggested the Committee address consistency issues in determining violations and civil penalties for continuing professional development (CPD) cases. AAG Lozano and the Committee discussed various options for determination of violations and civil penalties that could be applied consistently to similar cases and developed a draft matrix for Staff to use during investigations. There was no further discussion.

Contested Case Updates

There were no contested case updates.

Informal Conferences

2829 – Jack Watson

Mr. Watson's case was previously discussed during the June 13, 2013, August 8, 2013 and October 10, 2013 Committee meetings. Mr. Watson participated in his informal conference in person. He asked the Committee to share any questions or comments regarding his map of survey. AAG Lozano explained the informal conference process. Mr. Tappert said the key issue is that it doesn't appear that Mr. Watson followed Bureau of Land Management (BLM) procedures when surveying land previously surveyed by the BLM, as required by rule. Mr. Watson said it was difficult to perform a survey referencing ancient trees, many without markings. He said he called BLM for guidance on whether he should use the best fit of the trees in question or set the record from the existing bearing tree discovered. Not receiving guidance, Mr. Watson chose the latter option. He said he also called the county surveyor and arranged to have him come out and confirm all the corners before Mr. Watson disturbed anything or set any new monuments. However, he said, the county surveyor later declined to assist Mr. Watson. He said other surveyors have had similar issues in the same area regarding confusing, missing or relocated evidence. He said surveying in rural areas is very difficult because you're starting at the Range Line, which can be more than a mile away from the area in question. He said there were also multiple stones and mounds of stones matching the descriptions of the reference stones and mounds in the original maps of survey. Mr. Watson explained that stones often move, shift or otherwise relocate over time, which affects the accuracy of later surveys. Mr. Watson argued that he did everything possible to ensure the accuracy of his survey. He said he referenced previous maps, checked all calculations and did his best to locate and identify existing markers. He explained that when he can't find a corner and has to proportion it, he loses sleep over the potential for error, but he said he had to make decisions on the evidence available at the site. Mr. Watson said there were multiple rock mounds and multiple rocks nearby that matched the descriptions of the markers noted in the original map of survey. Mr. Tappert asked about the error in Southwest Section 8. Mr. Watson explained that the trees used in his survey were not the original trees referenced. Only one of the three was an original scribed tree and the others were blazed, one with a BLM tag on the ground nearby. All of the trees had been cut down. He said he focused on the area with positive evidence and based his corner determinations on that evidence. Mr. Watson said he didn't feel the need to search further for the original markers because all the evidence he found indicated that the spot he was in was correct. Mr. Tappert asked Mr. Watson if his explanation was meant to indicate that he exercised due diligence in searching for appropriate evidence, but simply went in the wrong direction to find the correct corners. Mr. Watson said yes. Mr. Tappert then asked Mr. Watson to explain the BLM procedures used to find lost corners during the survey. Mr. Watson said the lost corner procedures didn't apply in this situation because he didn't think the corners were lost. He said he was convinced that he was in the right location. Mr. Tappert then asked Mr. Watson about the error in Southeast Section 8. Mr. Watson said this corner was also not considered a lost corner because he found a stone matching the description in the map of survey. He said the stone wasn't marked, but it's not unusual for marks to be eroded after 150 years. Mr. Watson said there were no other choices available and the position he monumented best fit the topo-call. He also said that the current corner set by BLM isn't correct, as he knows the rock that BLM claims is the original was not there when he was surveying. Mr. Tappert asked if anyone had reported that as a lost or obliterated corner. Mr. Watson said no, because BLM doesn't consider it lost or obliterated since they found a point which they determined to be the correct corner.

Mr. Tappert attempted to clarify Mr. Watson's statement and asked if Mr. Watson meant that he used evidence and found one point, but BLM disagreed and found another point and determined that to be the original corner. Mr. Watson said that BLM has the final determination of corners on public land and he knows the stone wasn't there when he surveyed the area because he would have found it. He said the stone found by the BLM is the actual stone referenced in the map of survey, but Mr. Watson believes it was moved to that location after his survey. Mr. Tappert asked Mr. Watson how he could be sure the stone wasn't there when he surveyed. Mr. Watson said the stone was located 10 feet from the center of his search locus and his corner searcher had 20 years of experience in similar areas finding corners based on old evidence.

Mr. Tappert summarized Mr. Watson's statements to this point. He said Mr. Watson indicated that his narrative met the requirements at the time it was drafted and the issues with the corners in question resulted from misinterpretation of evidence, but he did use the appropriate BLM procedures to locate the corners.

Mr. Watson then brought up the issue of the unpermitted timber harvest that resulted from his surveying error. He said the land owner thought it was his land because of a past land exchange with BLM. He said the land owner was under the impression that there was no longer any BLM land within private land parcels. Mr. Tappert asked why the survey was conducted if the land owner thought he owned all the land. Mr. Watson said the survey occurred prior to the land exchange. AAG Lozano clarified that the issue being addressed by OSBEELS isn't the unpermitted timber harvest, but rather encroachment. She explained that, based on his survey, Mr. Watson determined public land to belong to a private individual, which was not the case. Mr. Watson disagreed with the term encroachment. He said there was no harvest or use as a result of his survey and ownership isn't determined or changed based on the outcome of a survey. AAG Lozano said profit or use of materials isn't required to determine encroachment, but what could have been done because of the results of his survey. Mr. Watson argued that the actual BLM corner still existed, regardless of the findings of his survey. He said, based on the manual, if the original corner still exists, it will always be the record corner; hence, his corner was inconsequential. Mr. Tappert said the person who requested the survey was under the impression that Mr. Watson's corner was accurate and the land was his and if BLM hadn't resurveyed the area, that land owner would still believe the land belongs to him.

Mr. Watson said surveyors deal with this scenario all the time. He said every monument set can potentially be contested by others based on evidence. He said he has another survey before the Board where the original stone was moved after he surveyed the area. Mr. Watson said the stone was too large to move, but it was now missing. He explained it could have been removed for construction or fencing projects in the area, but it doesn't mean that his point determination is incorrect. Mr. Singh asked Mr. Watson if there was any other evidence in the area where the original Southwest Section 8 stone was later found by BLM. Mr. Watson said yes and that he believes the individual(s) who placed it there put it where they thought it belonged based on other evidence in the original map of survey. Mr. Tappert said if the stone could just be placed in an approximate area and still manages to meet the evidence requirements, the evidence for that corner must have been weak. He then asked Mr. Watson when he would have made the determination that the corner was lost. Mr. Watson said if the stone wasn't located, he would have used the fence corner. Mr. Singh asked if this was the same fence corner referenced by the BLM's resurvey. Mr. Watson said yes.

Ultimately, Mr. Watson said he thought the allegation regarding an insufficient narrative should be determined to be unfounded because he was establishing corners and not running lines, as

referenced in rule. However, he said he still detailed the process he used to find lines. Second, Mr. Watson said he did use the BLM manual in his resurvey of land previously surveyed by the BLM. He said he didn't state the use of the manual in his narrative, but it is obviously referenced. He explained that it would be fraud if he stated on his map that all corners were found using the guidelines of the BLM manual because there were some that couldn't be located using those guidelines and he used different techniques to find the corners. Finally, Mr. Watson said the issue regarding original corners is an issue in the field. He said surveyors need Board support that original corners stand if new corners are set erroneously. He said he's made a previous complaint to the Board, but no action was taken which has emboldened people to set corners wherever they desire and there's no force making them reposition those incorrect corners to the original corners.

The Committee exited its public meeting pursuant to 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 noted that no decisions were made and no votes were taken.

The Committee offered to dismiss the insufficient narrative allegation against Mr. Watson with a Letter of Concern detailing what information must be included for a narrative to be considered sufficient. Additionally, the Committee determined that allegations (2) and (3) would stand, as the Committee felt Mr. Watson did not use due diligence in searching for Southwest Section 8 and used weak evidence to determine Southeast Section 8. Mr. Watson agreed. The Committee offered Mr. Watson a \$1,000 civil penalty for violations of former ORS 209.200(2) and (3) (1989), and former ORS 209.070 (1989). Mr. Watson accepted the offer. There was no further discussion.

Staff update: Mr. Watson has requested changes to the language of his settlement agreement. He is scheduled to meet with the Committee in an informal conference during the April 10, 2014 meeting to discuss these proposed changes.

2782 – Chander P. Nangia

Mr. Nangia's case was previously discussed during the December 12, 2013 Committee meeting. Mr. Nangia participated in his informal conference by telephone. Mr. Nangia said, in 42 years of practice, no one had ever questioned the quality of his design work. Mr. Tappert explained that the violations being discussed were not based on his design work, but due to him not reporting sanctions from other state boards to OSBEELS, as required under OAR 820-020-0045(4). Mr. Nangia said he thought he had sent a letter to all of the boards he was licensed through, but apparently he did not. He added that he hadn't practiced in Oregon in quite some time and disclosed his own health issues. Mr. Nangia's letter to the Board offered to surrender his Oregon license to settle this case.

The Committee exited its public meeting pursuant to ORS 192.690 (1) for private deliberation. 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 noted that no decisions were made and no votes were taken.

The Committee agreed to accept Mr. Nangia's permanent retirement of his Oregon license without the option of reinstatement in lieu of a civil penalty for a violation of OAR 820-020-0045(4). There was no further discussion.

Staff update: Mr. Nangia requested modification to the language in the settlement agreement. He was offered a second informal conference to discuss his requested modifications with the Committee. Mr. Nangia accepted the offer and is scheduled for an informal conference during the April 10, 2014 Committee meeting.

2743 – Timothy Bardell

Mr. Bardell's case was previously discussed during the August 8, 2013, October 10, 2013 and December 12, 2013 Committee meetings. Mr. Bardell participated in his informal conference via telephone. Mr. Bardell had received his Final Order Incorporating Settlement Agreement from the Board and requested that changes be made to a number of portions. Mr. Bardell noted that he disagreed with the allegation of violations of ORS 672.107(3) because he claimed he was not the engineer of record on this significant structure, which would have required a structural engineer. Ms. Duquette pointed out that OAR 820-040-0020 states that the engineer who designs the primary structural frame takes structural responsibility and is, therefore, in responsible charge. She explained that the portion he designed and stamped was the primary structural frame because it was the portion of the structure that provides stability. Mr. Bardell argued that there should be an accommodation for material providers, which is the capacity in which he said he was acting on this project. Ms. Duquette responded that there are accommodations for material providers, but in this case, his portion does not meet the exemption for provided materials because he designed the primary structural frame.

Mr. Bardell said that a structural normally engineer seals the foundation and is the engineer of record. Ms. Duquette said those circumstances are not applicable in his case. The Committee determined to cease discussion on this point.

Finally, Mr. Bardell argued that his seal was in compliance with ORS 672.020(2) and OAR 820-010-0620, just slightly smaller than required. Mr. Tappert pointed out that it was also missing expiration dates and the dates differed between stamped documents. The Committee determined that allegation would stand.

The Committee exited its public meeting pursuant to ORS 192.690 (1) for private deliberation. 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 noted that no decisions were made and no votes were taken.

The Committee offered to amend some areas of the settlement agreement. The Committee determined to change the reference to Mr. Bardell's registration status to active and change the expiration date noted, to add mechanical engineering to his qualifications referenced and to remove the alleged violation of ORS 672.045(2), as they felt he didn't misrepresent himself as a structural engineer, he acted as the engineer of record on a significant structure, which requires a structural engineer. Mr. Bardell said he still disagrees with the engineer of record determination. Mr. Tappert said that Ms. Duquette already explained that, under OAR 820-040-0020, a structural engineer is required to design the primary structural system, and the person responsible for the primary structural system of a structure is the engineer of record. Mr. Tappert explained that Mr. Bardell put his stamp on the design of a primary frame of a significant structure that was required to be designed by a structural engineer as the engineer of record. Mr. Tappert

continued, Mr. Bardell's stamp on the plan made him the engineer of record for the structure, but it was on a structure that required licensure Mr. Bardell does not hold. Ms. Duquette again reviewed the requirements for designing and stamping significant structures. Mr. Bardell implied that Ms. Duquette did not adequately understand the process of designing steel buildings and each building, regardless of size, is designed by inputting information into a program that calculates the design requirements. Mr. Kent noted that these programs are meant to assist engineers, but there are too many cases of people relying on those programs without applying the appropriate engineering knowledge and decision-making skills for the project.

Mr. Bardell requested the revised settlement agreement be emailed to him for review prior to making any agreements with the Board. Mr. Tappert said Staff would send him the settlement agreement and the deadline for return is February 28, 2014 to allow it to be reviewed and accepted at the March 11, 2014 Board meeting. There was no further discussion.

2771 – Marjan Sassanfar Amesbury

Ms. Amesbury's case was previously discussed during the October 10, 2013 Committee meeting. Ms. Amesbury participated in her informal conference via telephone. Ms. Amesbury said her failure to update her address with the Board was unintentional. She said things in her life became very hectic when she lost her employment, moved to Beaverton on short notice and had to find a home, enroll her children in school and start a new job in a few days. Shortly after, she relocated again to Tigard. She said while they lived in Beaverton, she still owned the home in Albany listed with the Board and she was still receiving mail there. However, she said she forgot to change her address with the Board when she sold the house and didn't think about it until receiving notification of her law enforcement case. Ms. Amesbury noted that she was compliant in her CPDs for the audit period and she changed her address as soon as she realized the wrong address was on file with the Board.

The Committee exited its public meeting pursuant to ORS 192.690 (1) for private deliberation. 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 noted that no decisions were made and no votes were taken.

Based on mitigating circumstances, the Committee offered to reduce Ms. Amesbury's civil penalty to \$100 for a violation of OAR 820-010-0605. Ms. Amesbury accepted the offer. Mr. Tappert told her to be sure to return the signed settlement agreement by March 1, 2014 to allow it to be reviewed and accepted at the March 11, 2014 Board meeting. There was no further discussion.

Cases Subject to OAR 820-010-0617

2725 – James D. Rodine/William Galli

Mr. Rodine's case was previously discussed during the December 12, 2010 LEC meeting, the November 30, 2011 Joint Compliance Committee (JCC) meeting, the April 11, 2013 LEC meeting, the October 24, 2013 JCC meeting and the December 12, 2013 LEC meeting.

Mr. Tappert summarized Mr. Rodine's case for Mr. Kent. He explained that Mr. Rodine is a certified engineering geologist who potentially engaged in the unlicensed practice of engineering, but additional investigation determined that the engineer in responsible charge of the project was intimately involved with Mr. Rodine's work. The investigation did not determine how Mr. Rodine's stamp ended up on a document twice where the engineer's stamp

did not appear at all, or how that copy ended up in the hands of the complainant, when it was not the copy submitted for permitting. Mr. Tappert and Ms. Duquette noted that the plans submitted for permitting have the appropriate endorsements, and that while the double stamp on a document indicates sloppy work, the double stamp on a document that was not submitted, and the complainant discovery the double stamped, but a copy not submitted doesn't merit further investigation. The Committee recommends the Board close Mr. Rodine's case as allegations unfounded. There was no further discussion.

2726 – David Gowers/William Galli

Mr. Gowers' case was discussed during the conversation regarding Mr. Rodine's case above. The Committee determined to issue a Letter of Concern to Mr. Gowers detailing the responsibilities of the engineer of record or engineer in responsible charge of a project. Mr. Wilkinson noted that when he initially talked to Mr. Gowers, he seemed unaware that supervision and control are required for responsible charge. AAG Lozano said the documentation shows that Mr. Gowers completed the tasks required of the engineer in responsible charge, whether or not he was aware of the requirements. Mr. Burger said the Letter of Concern seems redundant, as Mr. Gowers has already spoken at length with investigators regarding responsible charge. AAG Lozano said the role and responsibilities of Regulation Department staff are different from those of the Board itself. Regulation Department staff members are Board employees responsible for investigating allegations. The Board is the governing body responsible for ensuring registrants are provided information on the appropriate professional actions required by rules and statutes, carried out -- in part -- by issuing letters of concern. Finally, the Committee determined the allegations of negligence and incompetence were unfounded. There was no further discussion.

2749 – Software Technology Group/OSBEELS

Jay Abramovitz was previously listed as the respondent on this case, which was initially discussed during the December 12, 2013 Committee meeting. The Committee determined to change the respondent to Mr. Abramovitz's company, Software Technology Group (STG). The blog discussed previously by the Committee is still noncompliant. Mr. Abramovitz claimed he would have to research to process to remove the blog, but did not respond or make corrections by the deadline given by Ms. Peterson. Mr. Tappert asked if the Board is going to open cases on all individuals who claim to be "software engineers" when it isn't a branch examined by the Board. AAG Lozano said there are a number of cases coming up for the Committee where individuals are calling themselves "software engineers" and there is an overlap between the offering of software services and potential unlicensed practice of engineering. Mr. Kent asked if this issue comes up frequently. AAG Lozano said if the individuals show proof of engaging only in software programming activities, it is harder to apply statutory definitions, but in this case, STG is also advertising mechanical and electrical engineering services. Ms. Duquette also noted that the STG website clearly describes the difference between the software and engineering services offered.

Mr. Burger and Mr. Kent said it seems like it would be easy to remove the blog from the company's WordPress site and fix this issue. Additionally, regardless of the "blog" title, the document is linked to the STG website and thus constitutes advertising. There are no registered engineers employed by the company. Mr. Tappert asked how this case started. Ms. Lopez said STG came up during a search by Staff for contractors to work on the OSBEELS database. AAG

Lozano said it is completely within the Board's purview to open a case based on discovery of potential violations by Staff.

The Committee determined to issue a Notice of Intent (NOI) to assess a \$750 civil penalty for violations of ORS 672.045, ORS 672.020 and OAR 820-010-0720. There was no further discussion.

2767 – Suzanne Lane Marinello/Christopher L. Giggy

OSBEELS received a complaint from Mr. Giggy, of T Gerding Construction against Ms. Marinello, PE. Ms. Marinello designed the HVAC for the Wheelhouse, a mixed-use commercial office building which T Gerding Construction was contracted to build. She was contracted by the Professional of Record, DJ Architecture, to design the HVAC system.

Mr. Giggy alleged that Ms. Marinello's HVAC design did not consider all heat load factors and ignored the project design criteria in favor of her own agenda to infuse sustainable construction against the wishes of the project team. Mr. Giggy indicated there were cooling issues in the lobby and stairwell as a result of Ms. Marinello's design and the HVAC units for the lobby and stairwell had to be replaced. Mr. Giggy did not provide evidence that would indicate that Ms. Marinello's design was deficient or failed to meet the desired design criteria. The information provided by Comfort Flow Heating did not include calculations performed by a registered professional. It also appears that the technician was assessing whether the system could maintain a minimum temperature of 70 degrees, which may not have been a reasonable set temperature on a hot day. The 2010 OEESC specifies a minimum guideline of 75 degrees for cooling load calculations. Comfort Flow Heating's calculations supported Ms. Marinello's HVAC unit recommendations, but the company suggested increasing unit size to meet the owner's desired minimum temperature set point of 70-72 degrees.

No contract was provided designating the design criteria. Ms. Marinello and DJ Architecture both stated there were no specific design criteria, nor was a minimum temperature designated. Ms. Marinello stated that she followed the 2010 Oregon Energy Efficiency Specialty Code, AHRAE Standard 183 and Advanced Energy Design Guide when making her recommendations. Building Codes Division (BCD) stated there are no cooling requirements in code, only guidelines and there is a minimum indoor temperature of 68 degrees for heat only. BCD indicated that the guidelines Ms. Marinello reportedly used would have exceeded the minimum code requirements. After discussion, the Committee determined to close the case against Ms. Marinello as allegations unfounded and to conduct a preliminary evaluation into Comfort Flow Heating for potential unlicensed practice of engineering. There was no further discussion.

2786 – Millman Surveying, Inc./James S. Hepler

OSBEELS received a complaint from Mr. Hepler alleging that Millman Surveying, Inc., of Hudson, Ohio, was offering land surveying services in Oregon without an Oregon registered professional land surveyor on staff. Millman responded that Mitch Duryea, PLS, provided the firm's land surveying services in Oregon. His responsibilities include responsible charge, direction and review of Millman's Oregon projects. Millman does not have an office in Oregon. Mr. Duryea reports that he works part-time for Millman and uses his personal office. Millman indicated that they do not classify their professional employees as full-time or part-time, as they are expected to put in as much time as necessary to complete their work. Mr. Duryea admitted he was only a part-time employee, but Millman has a project office in Oregon, therefore, the company meets the exemption under OAR 820-010-0720(4). Ms. Peterson noted that the

company also occasionally solicits other surveyors to provide services in Oregon. AAG Lozano said that activity is acceptable as long as Mr. Duryea is a Millman employee. The Committee recommends the Board dismiss this case as allegations unfounded, based on OAR 820-010-0720(4). Ms. Duquette asked Staff how complainants are informed of case resolution. Ms. Peterson said the complainants receive a letter detailing the results. Ms. Duquette noted that it may be difficult to communicate the subtleties of a case like this via form letter. There was no further discussion.

2787 – David Lysne/Marvin Russell Pyles

OSBEELS received a complaint from Mr. Pyles, an OSU professor, alleging that Mr. Lysne, the former OSU College of Forestry Director, was responsible for the design of a stream culvert and is not a registered professional engineer. Mr. Pyles also alleged that Mr. Lysne utilized the computations and stream profile created by an OSU engineering student. While the property where the stream culvert is located is considered a commercial forest operation, it is also accessible to the public and owned by the Oregon State Board of Higher Education and, therefore, not exempt under ORS 672.060(5).

The design of the stream culvert required computations for culvert flows and surveying to establish grade. Mr. Lysne stated that the student had surveyed the stream channel for the direction and grade and his grade measurements were used to set the slope of the culvert even with the slope of the stream. He also said that the student determined culvert dimensions to accommodate a 50-year flood event and Mr. Lysne reviewed the equations.

Neither Mr. Lysne nor Dave Young, the former College Forests Road Manager who participated in the design of the culvert, are registered professional engineers and, therefore, not qualified to be in responsible charge of the engineering student's work. Additionally, a grant application implies that professional engineering services were budgeted for and provided by OSU College of Forestry staff, primarily Mr. Lysne. Mr. Lysne was also the primary signatory on the grant application.

Oregon Department of Forestry (ODF) issued a citation after the project was completed, indicating that the culvert was not constructed according to the design. ODF said the calculations were wrong and, therefore, so was the design. Mr. Lysne said he reviewed the design and assumed the role of construction supervisor. Mr. Lysne argued that ODF does not require a licensed engineer to design and install forest culverts, which was confirmed by ODF. Ms. Duquette pointed out glaring issues with Mr. Lysne's assertion that he did nothing wrong because ODF doesn't require a licensed engineer to design and install forest culverts. First, she said Mr. Lysne had to be aware that an engineer was required because it was noted in the grant application. Additionally, the culvert in question supports a road. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$1,000 for a violation of ORS 672.060. The Committee also determined to conduct a preliminary investigation into Mr. Young for potential unlicensed practice of engineering. There was no further discussion.

2794 – Tomislav Z. Gajic/OSBEELS

Mr. Gajic was selected to participate in an audit of his PDHs for the renewal period of July 1, 2009 through June 30, 2011. Mr. Gajic did not submit proper documentation of the required PDHs when requested to do so by auditors. He provided a CPD Organizational Form claiming 33 PDHs, but lacking the required supporting documentation. When auditors requested the supporting documentation, Mr. Gajic said he was unable to provide any additional

documentation. When contacted by investigators, Mr. Gajic reiterated that he was unable to provide the requested supporting documentation.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$1,000 and a 60-day suspension for a violation of OAR 820-010-0635(1). There was no further discussion.

2800 – Eric S. Kohl/OSBEELS

Mr. Kohl was selected to participate in an audit of his PDHs for the renewal period of July 1, 2009 through June 30, 2011. Mr. Kohl did not submit the proper documentation of the required PDHs when requested to do so by auditors. He provided a CPD Organizational Form without required supporting documentation. When contacted by investigators, Mr. Kohl submitted the necessary supporting documentation and was determined to be in compliance with PDH requirements for the audit period.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8). There was no further discussion.

2803 – Leroy F. Middleton/OSBEELS

Investigators informed the Committee that the respondent is deceased. The Committee recommends the Board close this case as respondent deceased. There was no additional discussion.

2804 – Randall David Raines/OSBEELS

Mr. Raines was selected to participate in an audit of his PDHs for the renewal period of January 1, 2009 through December 31, 2010. Mr. Raines did not submit proper documentation of the required PDHs when requested to do so by auditors or investigators. He did not respond to any letters from auditors. When contacted by investigators, Mr. Raines said he did not track his PDHs during the audit period and claimed to “relinquish” his Oregon registration while requesting that he be able to reinstate his registration in the future, should he resume practicing in Oregon. Ultimately, Mr. Raines provided a CPD Organizational Form and necessary supporting documentation and was determined to be in compliance with PDH requirements for the audit period.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8). There was no further discussion.

2805 – Jae Hwal Shin/OSBEELS

Mr. Shin was selected to participate in an audit of his PDHs for the renewal period of July 1, 2008 through June 30, 2010. Mr. Shin did not submit proper documentation of the required PDHs when requested to do so by auditors. When contacted by investigators, Mr. Shin said he believed he had submitted the requested information, but upon review it was determined to be only the CPD Organizational Form and the PDHs claimed were not completed within the audit period. Ultimately, Mr. Shin provided a CPD Organizational Form with credits completed during the audit period and necessary supporting documentation and was determined to be in compliance with PDH requirements for the audit period.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8). There was no further discussion.

2806 – David Barry Thomas/OSBEELS

Mr. Thomas was selected to participate in an audit of his PDHs for the renewal period of July 1, 2008 through June 30, 2010. Mr. Thomas did not submit the requested PDHs when requested to do so by auditors. It was revealed that Mr. Thomas' notices from auditors were mistakenly sent to Arkansas instead of Alaska (AR as opposed to AK). When contacted by investigators by email, Mr. Thomas submitted a CPD Organizational Form and necessary supporting documentation and was determined to be in compliance with PDH requirements for the audit period. The Committee recommends the Board close Mr. Thomas' case as allegations unfounded.

2809 – Chris Harper/Angela Flood

OSBEELS received a complaint from Ms. Flood alleging that Mr. Harper identified himself as an engineer in the Yamhill County voters' pamphlet when he is not licensed in Oregon. When contacted, Mr. Harper explained that he earned his undergraduate and graduate degrees in mechanical engineering and is licensed as a professional engineer in California. He spent 21 years in the Navy working with and managing engineers and said it was the standard to call a degreed engineer "engineer" and a professional engineer "PE." Mr. Harper told investigators he was unaware that engineer is a protected title in Oregon. He said his intent was to suggest his training and experience in engineering would bring technical knowledge to the city council. He said he no longer uses the term engineer in Oregon unless he is referring to a professional engineer and he has not used the title for himself since he became aware of the statutory limitations. After discussion, the Committee recommends the Board close Mr. Harper's case as compliance met.

2810 – Cisco Meneses/Andrew Ryan Leichty

OSBEELS received a complaint from Mr. Leichty, SE, alleging the unlicensed use of the term "engineer" by Mr. Meneses in his company name, Fire Escape Engineers. In addition, the company is not registered with the Secretary of State, Corporate Division. Mr. Leichty provided two reports completed by Fire Escape Engineers employees that advertised "Inspections," "Certifications" and "Load Test." Mr. Leichty believes there are two companies run by Mr. Meneses, Fire Escape Engineers and Fire Escape Services. The address for Fire Escape Engineers is in California and the address for Fire Escape Services is in Maryland. There are no companies matching those names licensed in either state.

A respond to allegations letter was sent to a California address and Mr. Meneses said he wanted to meet with an attorney to discuss the matter before responding. He also asked about obtaining Oregon registration for his staff engineer. Mr. Meneses did not contact the Board office again. The Committee members agreed that there was an obvious title violation. Additionally, Ms. Duquette noted that fire escape test procedures and results should be reviewed by a professional engineer. She said it is a requirement in the City of Portland, but she wasn't sure if the requirements were the same throughout the state. She also pointed out that the reports provided by Mr. Leichty have structural report components. AAG Lozano asked the Committee who is responsible for interpreting test results to determine fire escape certification. Ms. Duquette said

the procedures outlined indicate the engineer of record is responsible, which makes it seem like the company has a professional engineer in-house. Mr. Tappert noted that the reports indicate the client is responsible for securing an engineer of record. AAG Lozano said that makes it seem like the company collects data for engineers to use when evaluating fire escapes. Mr. Tappert asked if a NOI could be issued for the title violation and if the Committee could reserve the option to add unlicensed practice at a later date after further investigation. Ms. Lopez noted that the questions regarding engineers on staff would have been answered via the Company Questionnaire, which was not sent to the respondent, although it is procedure. The Committee directed Staff to send the Company Questionnaire and the case will be revisited during the April 2014 Committee meeting. There was no further discussion.

2811 – L. Calvin Martin/Wade James Denny

OSBEELS received a complaint from Mr. Denny, PE, Rogue Valley Sewer Services, regarding the design work of L. Calvin Martin. Mr. Denny alleged that Mr. Martin designed a proposed structure with a ground area of 5,200 sq. ft. as defined in OAR 820-040-0005(1). Mr. Martin did not respond to the allegations letter sent October 17, 2012. When contacted on January 23, 2014, Mr. Martin said he has several degrees in areas including architecture, planning and regional planning. He said his focus is on planning-related issues and not design work. He explained the design was done for friends who “take care” of his board. He found the property, assisted them with a zoning change and helped prepare loan documents. He also worked with the contractor to get the building constructed.

Mr. Martin said the design had not been submitted for a permit, but for comments on whether there was adequate drainage available for the site. He explained it was not meant to be a design review and, if the site had adequate drainage, an engineer would complete the design work. He also said the original metal building design was 4,000 sq. ft., but the owners wanted the roof extended to provide shade. The 1,200 sq. ft. addition was not enclosed and Mr. Martin thought it would not increase the ground area. However, by definition, the ground area did increase and, thus, it was no longer considered an exempt structure.

Mr. Martin was also investigated by the Oregon Board of Architect Examiners (OBAE) regarding this building. The information contained in the OBAE records is similar to the information obtained by OSBEELS and the OBAE case resulted in a Final Order by Default issued to Mr. Martin assessing a \$5,000 civil penalty for the unlicensed practice of architecture on a non-exempt building.

AAG Lozano noted that this is a case of first impression, as OSBEELS hasn't previously dealt with a case where the individual has been sanctioned for the same issue by another licensing Board within the state. She explained that the area in which Mr. Martin was practicing is an area of overlap between the practices of architecture and engineering. Ms. Duquette said she felt it was the same unlicensed practice and it has already been sanctioned by OBAE. Mr. Singh and Mr. Burger agreed and recommended issuing a Letter of Concern to inform Mr. Martin that his actions also constituted the unlicensed practice of engineering.

2812 – David James Collier/Douglas W. Booher

OSBEELS received a complaint from Mr. Booher alleging that Mr. Collier, PLS, failed to provide notice of right of entry in violation of ORS 672.047. Mr. Booher wrote that it became “apparent to us that on 7/20/11 our northern property line and house setback from that north line were surveyed and stakes set.” Additionally, Mr. Booher did not have the opportunity to request

a copy of the survey, nor were the temporary materials removed within 60 days. Mr. Booher was notified of the purpose of the survey by a land use planner on September 20, 2012.

Mr. Collier said he was hired by Mr. Booher's neighbor, Thomas Salamun, to survey his property. Mr. Collier said his client was particularly interested in the location of a gate that Mr. Booher had built on an easement on Mr. Salamun's land. Mr. Salamun also said an area of his fence was missing and he wanted to know where to build the replacement because he was concerned about its proximity to Mr. Booher's house.

On the day of the survey, Mr. Collier said they met a "teenage young man" who said he lived on the Booher property. Mr. Collier explained their purpose and the young man gave them permission to talk up the Booher driveway, which they declined because their traverse was on their client's property. When retrieving instruments for the survey, one of Mr. Collier's team members spoke to a man he believes to be Mr. Booher.

Mr. Collier said every effort was made to stay on Mr. Salamun's land and the stakes were set 0.2' onto Mr. Salamun's land to ensure any new fence would be on his client's property. Mr. Collier said the line did get very close to Mr. Booher's house, but the line ran dead center into the end of the old fence line. Mr. Collier also said that this was a location and construction survey and wasn't sure why the land use planner told Mr. Booher that the survey was to measure setbacks.

During discussion with investigators, Mr. Collier was notified of the changes to ORS 672.047 that required personal notice (not verbal permission) to landowners and/or occupants. When Mr. Collier occupied monuments common to both properties, he was entering upon Mr. Booher's land. Mr. Collier agreed with this assessment and discussed various ways to properly provide notice in accordance with ORS 672.047.

Mr. Singh said, in situations such as this, the requirement for right of entry notification if only occupying monuments is onerous. He explained that many boundary surveys result from owners fighting over property lines. He added that the personal notice requirement becomes substantial if you're surveying a property adjacent to an apartment complex, condominiums or timeshares and each individual owner and occupant must be notified. Mr. Tappert said these cases often end up at the Board, with new surveys being contested due to boundary line conflicts between neighbors. He explained that surveyors can protect themselves from sanctions by just notifying the adjacent property owners in case they mistakenly enter upon their land via a common monument. After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$250 for a violation of ORS 672.047. There was no further discussion.

2814 – Kenrick R. Luck/OSBEELS

Mr. Luck was selected to participate in an audit of his PDHs for the period of January 1, 2009 through December 31, 2010. Mr. Luck did not respond to the first two notices from the auditors. When he did respond, he did not provide the documentation necessary to comply with the audit. When Mr. Luck responded to investigators, he requested retirement and provided verification for 10 PDHs. He was not able to provide documentation to support the other 20 PDHs required for compliance.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$1,000 and a 60-day suspension for violations of OAR 820-020-0015(7) and OAR 820-010-0635(1) and (5). There was no further discussion.

2815 – James Andrew Miller/OSBEELS

Mr. Miller was selected to participate in an audit of his PDHs for the period of January 1, 2009 through December 31, 2010. Mr. Miller responded to the audit, but he did not provide the supporting documentation required. At the December 14, 2012 Examinations and Qualifications Committee (EQC) meeting, the Committee determined to send Mr. Miller's file to the Regulation Department for failure to respond to the audit notice.

Mr. Miller replied to a respond to allegations letter and indicated that the method of PDH documentation used during his previous audit was considered adequate and, therefore, was the method of documentation he continued to use and provided for the audit in question. Ms. Lopez noted that the previous procedure for evaluating compliance involved a Committee review of each case and each member of the EQC would review a portion of the audit files. Mr. Miller told investigators he had no intention of recreating his PDH records, has "dropped" his Oregon registration and no longer practices in Oregon and hasn't for at least eight years.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$1,000 and a 60-day suspension for violations of OAR 820-020-0015(7) and OAR 820-010-0635(1) and (5). There was no further discussion.

2816 – Bryce N. Mochrie/OSBEELS

Mr. Mochrie was selected to participate in an audit of his PDHs for the period of January 1, 2009 through December 31, 2010. Mr. Mochrie did not respond on four occasions to Board requests to comply with the audit requirements. He said he chose not to respond to the initial audit request because his company was not pursuing work in Oregon. He then responded in January 2014 because his company was pursuing work in Oregon and he needed to renew his license. This response included a CPD Organizational Form and supporting documentation sufficient to meet the requirements of the audit, however, he failed to cooperate with the Board for 18 months.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8). There was no further discussion.

2817 – Jeffrey Scott Payne/OSBEELS

Mr. Payne was selected to participate in an audit of his PDHs for the period of January 1, 2009 through December 31, 2010. He did not respond to the first two notices from the auditors. When Mr. Payne responded, he explained that he had been working away from home in a field office and was on vacation for July and August of the year the audit was initiated. He said a coworker signed for one of the letters from OSBEELS, but Mr. Payne said he did not immediately receive that letter. As Mr. Payne lists his contact address as his employer's address, it is his responsibility to ensure there are procedures in place to have his mail forwarded to him in a timely manner. Staff noted more than three months between receipt of the audit letter and contact with the Board office. Mr. Payne did not supply the documentation necessary to comply with the audit with his response. He did not respond to the final follow-up request for supporting documentation from auditors. When contacted by investigators, Mr. Payne provided the appropriate documentation and was determined to be in compliance with the PDH requirements for the audit period.

Based on the matrix discussed earlier in the meeting, the Committee determined to issue a NOI to assess a civil penalty of \$500 for a violation of OAR 820-020-0015(8). There was no further discussion.

2818 – Jong-Oh Lim/OSBEELS

Mr. Lim was selected to participate in an audit of his PDHs for the period of January 1, 2009 through December 31, 2010. Mr. Lim reported that he did not receive written correspondence sent to him from the Board and Staff report that most of the letters sent to him were returned by the post office and FedEx. FedEx reported that they were unable to deliver to Mr. Lim because the specific department for his employer, KEPCO, was not included in the address. Auditors had been communicating with Mr. Lim via email, but Mr. Lim reports he did not receive some of those emails. Investigators contacted Mr. Lim via email and he provided a CPD Organizational Form and supporting documentation for 33 PDHs. He was determined to be in compliance with the PDH requirements for the audit period. He also provided an updated company address where he could be reached by mail.

The Committee asked if this was a failure to report a change in address issue. AAG Lozano said there is no evidence to indicate that the address on file for Mr. Lim at the time wasn't the correct address and the mailing issue may have been caused by problems with the input of the address into the OSBEELS database. Mr. Tappert noted that Mr. Lim had been actively trying to communicate with OSBEELS throughout the process. The Committee determined to close this case as compliance met. There was no further discussion.

2845 – Timothy A. Wolden/OSBEELS

Mr. Wolden's case was previously discussed during the October 10, 2013 and December 12, 2013 Committee meetings.

As a result of a previous case, Mr. Wolden's registration was suspended for 45 days and he was assessed a \$16,000 civil penalty, of which \$8,000 was suspended for five years as long as the Board found no past, present or future conduct violations regarding Mr. Wolden. During that 45-day suspension period, it is alleged that Mr. Wolden practiced engineering on July 18, 2013 and August 2, 2013.

Ms. Duquette said Mr. Wolden didn't just violate his 45-day suspension, but displayed egregious disregard of the law. AAG Lozano informed the Committee that the \$8,000 civil penalty remainder is the sanction for violating his settlement agreement. The Committee now needed to determine if there would be an additional civil penalty or action against Mr. Wolden's license for unlicensed practice of engineering, which occurred when he engaged in engineering activities while his license was not in active status.

Mr. Singh asked if Mr. Wolden had indicated why he violated his settlement agreement. Staff reported that documentation indicated he wanted to finish a few outstanding projects that weren't completed prior to his suspension. The Committee discussed the fact that Mr. Wolden's settlement agreement was very favorable to him and easy to comply with, relative to the sanctions proposed and because he had been aware of the suspension's start-date at the conclusion of his informal conference. The Committee also noted that Mr. Wolden's original violations could have been easily avoided through compliance with the fire escape safety policies set by the City of Eugene, and by refraining from certifying he had completed tasks that he had not, in fact, completed.

Mr. Tappert reminded the Committee to view sanctions related to the unlicensed practice of engineering without considering the \$8,000 suspended civil penalty that is now payable. Ms. Duquette pointed out that any other individual engaging in the unlicensed practice of engineering would face the maximum sanctions. Mr. Tappert noted that there is a difference between

unlicensed practice and practicing while suspended, but indicated there is a huge ethical leap between willingly practicing without an active license and not knowing any better. The Committee agreed to include revocation as a sanction on the NOI, but continued to debate the appropriate amount for a civil penalty.

Mr. Burger asked how Mr. Wolden would pay the civil penalties if his license was revoked. AAG Lozano said that Mr. Wolden's ease versus inability to pay his penalties should not be a consideration in whether his license is suspended or revoked, and noted that it is the respondent's own affirmative choices that will potentially impact his ability to practice engineering in Oregon and pay his civil penalties. Mr. Singh said he was still trying to determine the reasoning behind Mr. Wolden's settlement agreement violation. He said he supported a high fine, but no revocation, as the revocation of a license is serious business. Ms. Duquette pointed out that Mr. Wolden has already been suspended and continued to practice. She asked Mr. Singh what the rationale would be behind suspending someone who has already shown they won't adhere to the terms of the suspension. Mr. Singh said Ms. Duquette had an excellent point.

After discussion, the Committee determined to issue a NOI to assess a civil penalty of \$8,000 and revocation of registration for violations of a settlement agreement and of ORS 672.045(1). There was no further discussion.

2847 – Dennis James Stanton/OSBEELS

OSBEELS opened a case regarding an allegation of unlicensed practice of engineering. This was based on information contained in a comity application received by the Board on April 23, 2013 from Mr. Stanton. His application described his work for three employers where he performed electrical engineering work in Oregon. He also used the "PE" designation and "Electrical Engineer" title in his signature line in email correspondence with the OSBEELS Registration Department. Mr. Stanton argued that the use of the "PE" designation was common practice with his current employer, M+W Engineering. He also explained that he was an electrical engineer and usually worked with the pay grade title of "Sr. Electrical Engineer" and he held a PE in Wisconsin. Mr. Stanton said he no longer works in Oregon and had never stamped or sealed a project in Oregon. He also said he had never solicited business as an Oregon PE. Mr. Stanton provided Oregon registered engineers who were in responsible charge of his work at Evergreen, Reyes Engineering and M+W Engineering. Mr. Stanton was not able to provide verification that he had passed the PE examination in Wisconsin and his comity application was denied at the July 9, 2013 Board meeting.

The Committee summarized that there was no substantial equivalency regarding his Wisconsin license which resulted in his denial for registration by comity in Oregon, he has since stopped working in Oregon and lives and practices in Washington and investigators verified that he was working under the direction of licensed professionals while in Oregon. Ms. Duquette asked if the Board should notify the licensure board in Washington of a potential violation. AAG Lozano explained that Washington lacks a restriction on title use. After discussion, the Committee recommends the Board close this case as compliance met. There was no further discussion.

2857 – United Engineering, Inc./OSBEELS

Jaime Lim was previously listed as the respondent on this case, which was initially discussed during the December 12, 2013 Committee meeting. The Committee determined to change the respondent to Mr. Lim's company, United Engineering, Inc., although the company is also referred to in business documents as First United Engineering. Further investigation revealed

that Mr. Lim had corresponded with a potential client and stated that “we” could provide “their” builder with “foundation information, steel reinforcing, beam and joist sizes, hold down, etc.” These statements appear to be an offer to engage in the unlicensed practice of engineering. Mr. Lim previously indicated that engineering work is contracted to an Oregon PE, who is a 1099 contractor. A 1099 contractor does not meet the definition of a “full-time partner, manager, officer or employee” under OAR 820-010-0720(3)(b).

Additionally, Mr. Lim’s website identifies him as a PE/PLS. Mr. Lim responded to investigators by stating that his “name still carries the PE because I’m also registered in other states and I’m an active PLS in Oregon.” This is not in compliance with OAR 820-010-0730.

Mr. Tappert said it seems like the company is offering engineering services without a full-time engineer on staff. AAG Lozano noted that, as an individual, Mr. Lim is also committing a title violation because he is calling himself a PE without the required state designation following the title to indicate that he is not licensed in Oregon. However, AAG Lozano pointed out that this is not in violation of Mr. Lim’s original settlement agreement because he was prohibited from personally performing engineering *work*, not from running an engineering company or “engaging in the practice of engineering,” which would have included using the PE title. The Committee determined to issue Mr. Lim a NOI to assess a \$1,000 civil penalty for a violation of OAR 820-010-0730.

Mr. Singh asked if action could be taken against Mr. Lim’s PLS for his actions. Mr. Tappert agreed that his actions reflect negatively on his professional integrity generally, but said it would be a hard case to argue, in terms of a nexus to Lim’s professional conduct as a land surveying registrant. Mr. Wilkinson asked if it would be covered under OAR 820-020-0015(4). AAG Lozano said it would be hard to argue that Mr. Lim was “associating” in business ventures with a person he had reason to believe was engaging in fraudulent or dishonest business or professional practices when Lim *was* the individual perpetrating the fraudulent and dishonest activity.

Regarding United Engineering, Inc./First United Engineering, the Committee determined to issue a NOI to assess a \$1,000 civil penalty for a violation of OAR 820-010-0720.

Mr. Burger suggested seeking the maximum civil penalty because the company is continuously and intentionally providing engineering services in violation of OAR 820-010-0720, despite being informed of the violation. Mr. Tappert said that continuous and intentional factor is very significant. The Committee determined to not utilize the option of an injunction against the company at this time. However, the Committee directed Staff to report United Engineering, Inc./First United Engineering to the Secretary of State (SoS)’s office for operating a business in Oregon without SoS licensure. Staff was also directed to add Jason Lim’s, Mr. Lim’s son and the individual identified as the owner of First United Engineering, information to the case file. AAG Lozano explained that the businesses are considered co-respondents because they were co-mingled and used interchangeably as entities in business activities, on correspondence, and bidding, billing, etc. There was no further discussion.

2859 – Douglas M. Ferguson/OSBEELS

OSBEELS opened a law enforcement case against Mr. Ferguson based on information received during the investigation of Case No. 2827, that alleged there were a number of surveys completed by Mr. Ferguson that were filed years after the monuments were set. Although Mr. Ferguson did not provide any supporting documentation relevant to the surveys in question, he disclosed that Morrow County surveys 1597 and 1681 were filed years after the field work was completed, when his firm discovered they had not been filed. Mr. Ferguson stated that there are

no remaining unfiled surveys from the firm, which was discovered to be untrue. Case No. 2858 against Kenneth Delano, who is a staff surveyor for Ferguson Surveying & Engineering, references at least two unfiled surveys with the firm at the time when Mr. Ferguson said there were no unfiled surveys remaining.

Mr. Tappert asked if the surveys should be considered as individual violations or as one violation. Mr. Singh noted that Mr. Ferguson said he submitted the surveys, but none are on record and he has no proof of any notice regarding their disposition. Mr. Singh questioned if Mr. Ferguson is keeping track of his submitted surveys. Ms. Peterson said Morrow County has no record at all of submission from Mr. Ferguson. Mr. Singh noted that there have been a number of issues with county surveyors not keeping proper records of filed surveys. AAG Lozano reminded the Committee that it can determine a policy for dealing with the issue of county surveyors not implementing sufficient record keeping procedures. Mr. Tappert noted that Mr. Ferguson didn't date one survey and didn't follow the other through to completion, however, there are other issues regarding surveying maps filed in Morrow County. The Committee debated over the proposed civil penalty for Mr. Ferguson, as there was confusion regarding how much of a role the Morrow County Surveyor's Office played in the filing issues. AAG Lozano told the Committee it has the option to address the failure to include a survey date at this point in time and make a determination regarding the failure to file, within the required timeframe, after reviewing other survey problems in Morrow County included in upcoming cases. The Committee determined to issue a NOI to assess a civil penalty of \$250 for a violation of ORS 209.250(3)(b). There was no further discussion.

Case Disposition

The Regulation Department reported the following:

Options Form – Did not contest

2754 – Case
2772 – Cooke
2774 – Mitchell
2839 – Kobayashi

The Committee recommends the Board approve the Default Final Orders for the cases listed above.

NOI sent – No response within 21 days

2757 – Johnson
2764 – Zaitz
2773 – Mendez
2855 – Gery
2856 – Lee

The Committee recommends the Board approve the Default Final Orders for the cases listed above.

NOI sent – Schedule informal conference at a later date

2697 – Dale La Forest
2853 – Charter Construction

NOI work in progress

2762 – Premsingh

2770 – Strickland

2790 – Cobb

2792 – Diaconu

There was no additional discussion.

Preliminary Evaluations

IBI Group, Portland

As a result of the investigation of related Case No. 2751 for Adrian Pearmine, the LEC made the determination on October 10, 2013 to conduct a preliminary evaluation regarding Mr. Pearmine's employer, IBI Group, Portland. Due to Mr. Pearmine's delinquent registration status, there were concerns regarding possible violations of ORS 672.045, ORS 672.020 and OAR 820-010-0720. The IBI Group advertised engineering services on their website, but there were indications that they did not have registered staff to provide professional engineering services in the Portland office.

The company's attorney, David Rosenthal, contacted Ms. Peterson and informed her that IBI had disconnected all links to the Portland office from its website and the links would remain disconnected until Mr. Pearmine's registration was brought back into active status. Two weeks later, Mr. Pearmine's registration was active and Mr. Rosenthal told Ms. Peterson that the director of the firm would be seeking registration in Oregon by comity to ensure the presence of another professional engineer on staff. Additionally, Mr. Rosenthal said the company will be tracking continuing education to ensure registration requirements are met and registrations remain active.

After discussion, the Committee determined to not open a case on this matter.

RediPour Wall Systems

A complaint was received on July 10, 2013 from Robert Lennox, PLS, who alleged that RediPour was in violation of ORS 672 for the practice of land surveying when they perform Robotic Site Topography. Review of the RediPour website also indicated that there was a potential violation of OAR 820-010-0715 for the advertisement of engineering services without the identification of a registered professional engineer. RediPour is actively registered with the Construction Contractors Board.

RediPour provided evidence of a language change on the website, but the changes did not address the potential violation. A Company Questionnaire identified the registered professional engineer responsible for providing engineering services and RediPour added him to their website. Compliance with OAR 820-010-0715 was met.

Regarding the Robotic Site Topography services, the website describes these services as "a detailed measurement of the surface features of your property. This data gives us accurate elevations and positions that we base designs around for your project..." Rob Boydston Sr. explained that RediPour uses Trimble equipment much like a cabinet maker would – to obtain the measurements they need. He said their registered professional engineer is not responsible for the Robotic Site Topography.

Mr. Singh said an engineer could legally do much of the work referenced on the RediPour website. He said many engineers perform site topography in the course of construction work. Mr. Tappert clarified that the measurements are being used to make models. Ms. Duquette added that the models are used to create forms that work for different land features. Mr. Singh

explained that collecting and using data to make a topographic map for any use is the practice of surveying, as per ORS 672.005. Mr. Singh clarified that measurements made onsite for immediate use is not surveying, but collecting data and producing a product later is considered surveying. Mr. Wilkinson asked if there was any distinction between products generated for use inside the company versus those offered to external parties. Mr. Singh said those products should be generated by a PE or PLS, regardless. AAG Lozano explained that Mr. Wilkinson's question seemed to be referencing a potential industrial exemption, however, there is no industrial exemption for land surveying.

The Committee requested additional investigation to determine what RediPour is producing with this data and what role their licensed professional engineer plays in each step of the process.

Judson Coppock, PLS

Through the investigation of Case No. 2827, information was brought to the attention of OSBEELS that there were potential violations of ORS 209.250 by Mr. Coppock during his term as Morrow County surveyor from January 2005 to December 2012. A survey was performed by Ronald McKinnis, PLS, in Morrow County for a client named Patterson. During the investigation of Case No. 2827, Mr. Coppock reported that Mr. McKinnis brought the survey map to him for a "quick look over" on or before January 2007. Mr. Coppock said he told Mr. McKinnis that the survey needed a better description. He said the survey was submitted to him for review "much later" with a revision date of June 29, 2008. Mr. Coppock stated that he again returned the survey for corrections. The McKinnis survey was submitted again "much later" with a revision date of August 20, 2012. Mr. Coppock said he returned the survey again for corrections and then did not receive a response before his term as the county surveyor ended. The survey remains to be filed and is in process with the new Morrow County surveyor. When contacted for additional information regarding this survey, Mr. Coppock said his recordkeeping was poor and Morrow County did not maintain a log of surveys submitted for review. Therefore, Morrow County does not have the exact dates that this survey was submitted for review, only the revision dates noted on the maps. However, information was disclosed by Mr. McKinnis confirms that he did not submit the corrected maps within the 30 days required by ORS 209.250(4)(b). Mr. Coppock said he did not forward information regarding Mr. McKinnis' failure to comply with statute to OSBEELS as required because of political issues and he believed it was appropriately addressed by the current Morrow County surveyor. It was also found the Mr. Coppock informed Mr. McKinnis by email in August 2012 that he was removing himself from the reviewing and approval process for survey work performed by Mr. McKinnis due to the likelihood of these reviews becoming adversarial.

The Committee discussed whether a case should be opened against Mr. Coppock for potential violations of ORS 209.250(4)(a) and (c) for failing to forward information to OSBEELS regarding Mr. McKinnis' noncompliance with ORS 209.250(4)(b) and for withdrawing from the reviewing process of map submissions from Mr. McKinnis in Morrow County. The Committee directed Staff to put Mr. Coppock's case on hold while conducting additional investigation regarding survey issues in Morrow County, as discussed in Mr. Ferguson's case. There was no further discussion.

Lawrence Fischer, PE

OSBEELS received an email from Lisa Mathews, compliance officer for the Nebraska Board of Engineers and Architects stating that Mr. Fischer renewed his license and disclosed two

disciplinary actions. After looking into Mr. Fischer's disciplinary actions further, Ms. Mathews found disciplinary actions in Oklahoma, South Carolina, Arizona, Ohio, Kentucky, Idaho, Pennsylvania, Colorado, North Carolina, Arkansas, Alabama, Missouri and two in Texas. Mr. Fischer has not disclosed any of these disciplinary actions to OSBEELS, as required by OAR 820-020-0015. After reviewing the disciplinary actions, the Committee identified two primary violations for stamping documents not under his control in Oklahoma and Arkansas. The other disciplinary actions were reciprocal and based on these two actions. The Committee determined to open a case against Mr. Fischer for violations of OAR 820-020-0015. There was no further discussion.

Unfinished Business

2689 – Denny Whitzel – Request for reconsideration

The allegations against Mr. Whitzel were discussed during the April 11, 2013 Committee meeting. The Board approved the Committee's recommendation to close the case as compliance met. The Ralph M. Yenne, an attorney, contacted the Board office on June 28, 2013 on behalf of his clients, Marlin Buchholz, PE, and Brad Buchholz, EI, requesting reconsideration of the case. He alleged that Mr. Whitzel is still practicing engineering without a license by commissioning buildings. Mr. Yenne submitted suggestions for additional areas of investigation, but did not submit any new evidence to support his allegations. The Committee discussed the current NCEES task force on building commissioning work. However, Staff reminded the Board that NCEES has a different mission than OSBEELS – the NCEES focus is on expanding the field of practice, whereas OSBEELS focuses on life/safety issues. As no new evidence was provided to support the accusations against Mr. Whitzel, the Committee determined to not reopen the case. AAG Lozano was directed to contact Mr. Yenne to inform him of the Committee's decision and ensure he and his clients are aware that OSBEELS is always open to any new evidence or new complaints against individuals or entities that may be engaging in the unlicensed practice of engineering. There was no further discussion.

2792 – Vlad Diaconu

During the December 12, 2013 Committee meeting, Staff was directed to issue a NOI to Mr. Diaconu, Case No. 2792, in the amount of \$250 for a violation of OAR 820-010-0605(1). While preparing the NOI, it was revealed that Mr. Diaconu's registration was in delinquent status during the time of the CPD audit and, therefore, he should not have been included in the audit. Mr. Abrams reported that Mr. Diaconu did not sign the portion of his renewal attesting to the completion of his CPDs, which would have put his license in delinquent status, but his license had been inadvertently listed as active in the OSBEELS database. Ms. Duquette pointed out that his registration status error would not have been identified if not for the audit. The Committee determined to withdraw the NOI issued to Mr. Diaconu on the grounds that he was ineligible to be selected for audit. There was no further discussion.

Shaun Martin, EI

A registered professional engineer from Virginia, David A. Kaulfers, contacted OSBEELS regarding Shaun Martin, EI, and Case No. 2750. Mr. Martin was assessed a \$1,000 civil penalty and a 90-day suspension of his EI certificate for submitting a letter of reference on behalf of an applicant to the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects and using the title of "Civil Engineer" and forging an

engineer stamp. Case No. 2750 was closed January 29, 2013. Mr. Kaulfers read the Committee and Board minutes and challenged Mr. Martin's statements during the informal conference indicating that he had been subjected to military discipline.

Mr. Kaulfers' statements made it unclear if the Board had jurisdiction over a federal entity in California. Mr. Wilkinson reviewed Mr. Martin's case for incongruous evidence and found that Mr. Martin had informed Board Staff of disciplinary action from the military that resulted from his letter to the Missouri Board. He said there was a disciplinary hearing on January 4, 2012 and his pay was docked for 30 days and he received a letter of reprimand from the Army. Mr. Kaulfers directed Mr. Wilkinson to LTC Torrey DiCiro, who was Mr. Martin's commanding officer during his entire duty in San Francisco. LTC DiCiro said there was no disciplinary action processed related to Mr. Martin. He said Mr. Martin explained the registration issue by stating that Oregon sent his renewal to the wrong address when he was moving. LTC DiCiro said military personnel were unaware that Mr. Martin was not a registered professional engineer. AAG Lozano pointed out that the Board never had the authority to revoke Mr. Martin's EI certificate. She said this fact was discovered during an internal process audit after Mr. Martin's case was already closed. She further explained that an EI certificate can only be revoked if it was discovered to be issued and the individual did not pass the Fundamentals of Engineering examination. The EI certificate only indicates that an individual passed the FE. As it is not a registration, there can't be disciplinary action taken against it. However, AAG Lozano said if the Board finds that Mr. Martin has been untruthful with the Board, they can draft a letter of reprimand, assess a civil penalty and deny future registration in Oregon.

The Committee discussed whether the issue with Mr. Martin's actions was that he was untruthful to mitigate his punishment or providing false statements to the Board. AAG Lozano reminded the Committee that the mitigation of his punishment is a moot point because revocation of his EI certificate was never a legitimate option, therefore, having it reduced to a suspension (also not an option) was not actually mitigation. Mr. Burger noted that the Committee and Board must take action to protect the public from individuals blatantly lying about their credentials. After discussion, the Committee determined to open a case against Mr. Martin for making false statements to the Board. There was no further discussion.

Case Status Report

The LEC offered no comments on total cases open (92), cases subject to collections (10), or on cases subject to monitoring (13).

2820 – Daniel Sherwood

During the December 14, 2012 EQC meeting, Mr. Sherwood's file was referred to the Regulation Department for not responding to the requests for participation in the July 2012 PDH audit. When the case became active for investigation, it was discovered that Mr. Sherwood's registration was no in active status at the time he was selected for the audit. Therefore, Mr. Sherwood should not have been selected for participation, as only active licenses are eligible for audit. The Committee determined that Mr. Sherwood was incorrectly selected for audit and recommends the Board close this case as allegations unfounded. There was no further discussion.

New Business

Yearly review of LEC disciplinary procedures and LEC policy and procedures

The Committee reviewed the LEC disciplinary procedures and LEC policy and procedures documents that were last approved by the Board in 2008. Ms. Peterson said she believed there was a more recent version of these documents.

The Committee recommended Staff to add the CPD matrix being developed by AAG Lozano and the penalty consideration factors contained in OAR 820-010-0617. The Committee reviews this documentation to keep the policy and procedures current with changes in rules and statutes, provide reference materials to Committee members and serve as a tool for familiarization with the Committee for new members. After discussion, the Committee recommends the Board discuss moving consideration of audit compliance issues to the LEC instead of being addressed at EQC. There was no further discussion.

Staff update: Ms. Peterson was correct regarding a version of the policy and procedures amended during the May 2013 Board meeting. Mr. Wilkinson provided Committee members with a copy of the most recent documentation.

The meeting adjourned at 2:42 p.m.