



Oregon

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

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LAW ENFORCEMENT COMMITTEE

Minutes of Meeting

August 14, 2014

Members Present:

William Boyd, Chair (arrived at 10:00)

Jason Kent (ad hoc Chair until 10:00)

Ken Hoffine

Oscar Zuniga (ad hoc, until 10:00)

Members Absent:

Ron Singh (excused)

Staff Present:

Mari Lopez, Administrator

Jenn Gilbert, Executive Assistant

Jason Abrams

Monika Peterson

James R. (JR) Wilkinson

Others Present:

Katharine Lozano, Assistant Attorney General

Oscar Zuniga (observer after 10:00)

Susan Newstetter (observer)

Dave Van Dyke (observer)

John Robert Marks (respondent)

Ramasurdial Premsingh (respondent)

Mitchell James Duryea (respondent)

A meeting of the Law Enforcement Committee was called to order at 8:19 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301. Board President Susan Newstetter appointed Oscar Zuniga an ad hoc LEC member prior to William Boyd's arrival, in order to achieve a quorum, and appointed Jason Kent as the ad hoc chair prior to William Boyd's arrival. Mr. Zuniga observed the rest of the meeting once William Boyd arrived.

Public Comment

There was no public comment.

Contested Case Updates

There were no contested case updates.

Informal Conferences

2801 – David W. Kreighbaum

Mr. Kreighbaum's case was previously discussed at the April 10, 2014 Committee meeting. Mr. Kreighbaum participated in his informal conference by telephone. Mr. Kreighbaum stated that he was deployed out of the country with the National Geospatial-Intelligence Agency voluntary deployment team (NVDT) as a civilian, embedded with the military, at the time the audit letters were sent to his residence. Once made aware of the audit, he worked to gain compliance with the CPD audit, which he eventually did. Mr. Kreighbaum stated that he did not receive audit letters sent to his home address on April 2, 2012 and to his employer's address on May 4, 2012.

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.

After deliberation, the Committee asked for clarification regarding the large delay in Mr. Kreighbaum reviewing the correspondence sent to him and, therefore attaining compliance with his CPD audit, and Mr. Kreighbaum explained that he returned to the United States with a large amount of mail to go through, and that OSBEELS materials were not treated as urgent by the person handling his mail in his absence. The Committee asked Mr. Kreighbaum what he found to be a fair and equitable solution to this case, and he replied that he admitted guilt to not updating his address with the Board as described in OAR 820-010-0605 when he was overseas, and that a minor civil penalty for this infraction would be appropriate.

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After deliberation and consistent with the CPD matrix, the Committee and Mr. Kreighbaum agreed to settle the matter with a \$250 civil penalty for not updating the Board with an address change, in violation of OAR 820-010-0605. There was no further discussion.

2808 – Gerald Zadikoff

Mr. Zadikoff's case was previously discussed at the April 10, 2014, Committee meeting. Mr. Zadikoff participated in his informal conference by telephone. Mr. Zadikoff explained that he failed to respond to numerous attempts at contacting him by the Board due to medical issues he was dealing with during the time auditors were attempting to contact him. The Committee pointed out that he failed to respond to the October 15, 2012, respond to allegations letter, received over six months after his hospitalization beginning March 15, 2012. Mr. Zadikoff explained he was still focused on recovering at that time, that his office moved and that delayed his receipt of the letter. The Committee asked if Mr. Zadikoff received all of the letters sent by the Board, Mr. Zadikoff stated that he was unsure due to his medical condition at the time. The Committee then asked Mr. Zadikoff his opinion about what a fair resolution to this case would be, and he stated the case should be dismissed as he eventually submitted all CPD materials.

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After deliberation, the Committee and Mr. Zadikoff agreed to settle the matter by allowing Mr. Zadikoff permanent retirement of his license without the possibility of reinstatement in lieu of the civil penalty for the violation of OAR 820-010-0015(8). There was no further discussion.

2807 – David Charles Weiss

Mr. Weiss' case was previously discussed at the April 10, 2014, Committee meeting. Mr. Weiss participated in his informal conference by telephone. Mr. Weiss explained that he originally submitted a CPD Organizational form detailing 38.5 credits, but due to one item being prior to the audit period and another item being accidentally duplicated, he was short of the 30 credits needed. He went on to say that he hasn't done any engineering work in Oregon for several years. The Committee asked him if he was interested in permanently retiring his license in lieu of a civil penalty, and Mr. Weiss explained that he has never faced a disciplinary action in his career and would like to avoid any disciplinary action. The Committee then explained that due to being below the required 30 PDH units during the audit period, there was no way of his avoiding disciplinary action, and that it would be a choice of paying a civil penalty or surrendering his license permanently.

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After deliberation, the Committee offered Mr. Weiss a settlement agreement with the civil penalty reduced to \$500 due to additional CPD materials Mr. Weiss submitted to OSBEELS after the issuance of the NOI. However, the Committee also offered the option to permanently retire his registration in lieu of paying a civil penalty. Mr. Weiss expressed his desire for the permanent retirement settlement option. There was no further discussion.

At this point Committee Chair William Boyd arrived and chaired the remainder of the Committee meeting.

2793 – Richard Drewelow

Mr. Drewelow's case was previously discussed at the April 10, 2014, Committee meeting. Mr. Drewelow participated in his informal conference by telephone. Mr. Drewelow explained that he took the required CPD hours during the audit period and that the issue was his lack of documentation, which has been submitted since his audit was transferred to the regulation department. He said that he did not receive the three notices sent by auditors in early 2012, explaining that he didn't understand that he needed to update the Board with his work address when his company was bought out. Mr. Hoffine pointed out that the first two were sent to his home address, and Mr. Drewelow affirmed his home address has been the same for 18 years; he does not remember seeing the audit letters and asked that the case be dismissed as he has completed the CPD requirement.

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.

After deliberation and consistent with the CPD matrix, the Committee offered Mr. Drewelow a settlement agreement with a \$750 civil penalty, which he did not accept. He then proposed permanent retirement without the possibility of reinstatement in lieu of a civil penalty.

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After deliberation, the Committee agreed to Mr. Drewelow's proposal of a settlement agreement with permanent retirement in lieu of a civil penalty. There was no further discussion.

2822 – John Robert Marks

Mr. Marks' case was previously discussed at the April 10, 2014, Committee meeting. Mr. Marks participated in this informal conference in person. Mr. Marks explained that he did not properly record his CPD activity, although he believes he likely obtained at least 30 hours of CPD during the audit period. He explained that he retired from ODOT in 2001, and kept his license after that in spite of not needing it any longer. He is currently employed with W & H Pacific and stated that he does not seal any work. He also informed the Committee that he works under the supervision and control of a registered PE. He was unable to provide any explanation for why he failed to respond to any of the numerous Board communications to him, nor why he refused certified mailings from the Board.

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The Committee asked Mr. Marks what CPD's he participated in, which he described, in part, but maintained he would be unable to document. The Committee asked for the name of the person in responsible charge of his work at W & H Pacific, whom he eventually was able to name.

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After deliberation, the Committee decided not to reduce the civil penalty from \$1,500 or reduce the suspension from 60 days. Mr. Marks accepted the terms and agreed to pay the civil penalty by October 1, 2014.

2762 – Ramasurdya Prem Singh

Mr. Prem Singh participated in an informal conference at the June 12, 2014 Committee meeting and requested a second informal conference. He participated in person. Mr. Prem Singh

explained that he felt he was always cooperative with the Board, and that the Committee should consider dismissing his case based on the fact that he spent the audit period in Florida due to a personal matter. He explained that he could not find a land survey specific CPD course in Florida, and that he settled for a real estate course, and then offered to take any make up CPD courses the Committee wanted. AAG Lozano explained the rule did not allow for make-up CPD's after the fact. Further, the committee noted that Mr. Premisng's trip to Florida, for personal reasons, occurred in a different time frame than the audit period. Mr. Premsingh then asked that the civil penalty be removed from the settlement agreement.

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After deliberation, the Committee denied Mr. Premsingh's requests to either dismiss the case or reduce the civil penalty. The Committee offered Mr. Premsingh retirement of his license in lieu of the civil penalty or to maintain the settlement agreement as written originally. Mr. Premsingh declined to retire his license and agreed that he would either returned the signed settlement agreement as written by August 28th or the case would go to hearing. There was no further discussion.

2697 – Dale La Forest

La Forest's case was discussed at the February 9, 2013 and December 12, 2013 Committee meetings. Mr. La Forest participated in his informal conference via telephone. After introductions, Mr. La Forest noted that he was told that the civil penalty was \$5,000 and he questioned why 80% of the penalty had been reduced. AAG Lozano asked what notice he had received. He explained that he was threatened with a fine of \$5,000 when the case was opened. Mr. Wilkinson replied that he had no authority to state a penalty amount and that the investigation needed to be completed in order to determine if a violation had occurred. Mr. La Forest stated he would research his records. Mr. Wilkinson stated that the NOI documented the violations and the proposed sanction.

AAG Lozano outlined the difference between a formal hearing and the informal conference. She pointed out that Mr. La Forest submitted extensive legal arguments, which is appropriate for a hearing. However, this was an informal conference meant to discuss mitigating factors and for him to make a settlement offer. Mr. Boyd added that if there is no agreement then we would go to hearing. AAG Lozano clarified that the hearing would be the opportunity to present legal arguments.

Mr. La Forest stated his mitigating factor as not violating any law. Even if he had practiced engineering, which he had not, it would be exempt. Furthermore, Mr. La Forest believed no one had been prosecuted in Oregon for the unlicensed practice of acoustical engineering. He argued that this has been blown out of proportion; that the law has been misunderstood; that professional reviewer Tobin Cooley fraudulently represented his comments as engineering; and that the Board dismissed a complaint he made against Mr. Cooley for violations for code of ethics yet is pursuing a fine against him. He wanted the Committee to respond.

AAG Lozano asked if he was proposing to dismiss the case. He responded affirmatively adding that his response to the NOI undermines the NOI allegations. Without the violations, he does not see how the case can proceed. He recounted for the Board a case involving a Geology professor

who he claimed was prosecuted for speaking at a public hearing. He further claimed that the State eventually dismissed the case and changed the law, and Mr. La Forest felt that the legal principles in his case are analogous, in that the the Geology Board overreached its statutory authority, and the OSBEELS is as well..

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Once the Committee reentered public meeting, Mr. Hoffine made a motion to continue with disciplinary action as set forth in the NOI. Mr. Kent seconded. The vote was unanimous. Mr. Boyd informed Mr. La Forest that the Board would refer the matter to the Office of Administrative Hearings. Mr. La Forest asked about the details. AAG Lozano explained that he will receive detailed written information about the contested case process and rights, including his appeal rights. Mr. La Forest affirmed that he understood. There was no further discussion.

2878 – Mitchell James Duryea

Mr. Duryea's case was previously discussed at the June 12, 2014 Committee meeting. Mr. Duryea participated in this informal conference in person. This case came about as a result of information from case no. 2786 Millman Surveying. The allegations in Mr. Duryea's Notice were that Mr. Duryea failed to cooperate with the Board by failing to provide the information requested by investigators within the timeframe given in some instances, and at all in other instances. Mr. Duryea stated that he was unprepared for the informal conference due to moving his office from Klamath Falls, Oregon to Spokane, Washington. Mr. Duryea's firm, Duryea and Associates, acted as a subcontractor for Millman Surveying, Inc. and Mr. Duryea was directly employed by Millman Surveying, Inc. through March 2014.

Mr. Duryea expressed frustration in the investigation process, explaining that he had difficulty understanding instructions from investigators and complying. He expressed disagreement with some of the language in the NOI, admitting that he did not meet deadlines but stating that he had no intent to obstruct the investigation and pointed out that he did provide some documents. Mr. Duryea described field staff performing the majority of the calculations and drawings on ALTA and ACSM surveys for Millman where he was in responsible charge, admitting he very rarely went into the field to verify the elements of these surveys. He stated that these surveys did not require the same level of detail as boundary surveys, which he performs with Duryea and Associates. For boundary surveys, he claims to be much more hands on. He also claimed that for both the Duryea surveys and the Millman, a series of process checklists are used to provide quality control.

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After deliberation, the Committee proposed imposing but abated Mr. Duryea's civil penalty, dismissal of the Notice and its penalty conditioned on his providing a list of materials specified by the committee, to be received by the OSBEELS no later than August 29, 2014.

Case Disposition

The Regulation Department reported the following:

Did Not Contest: Recommend Approval of Default Final Order

2789 – Jerry Wayne Alber

2835 – Donald Marx Jr.

2838 – Bradley Thurman Stiles

2842 – Marshall Robert Pihl

2843 – Won-Jin Sung

2844 – David G. Dickoff

2861 – Richard A. Brown

It was moved and seconded (Hoffine/Kent) to recommend issuing Default Final Orders for the above cases. A vote of Committee members was unanimous in the affirmative.

NOI Sent, No Response within 21-days: Recommend Approval of Default Final Order

2819 – Scott T. Ogren

2857 – United Engineering, Inc.

2866 – Alex Nikolakopoulos

2867 – George Sening

It was moved and seconded (Hoffine/Kent) to recommend issuing Default Final Orders for the above cases. A vote of Committee members was unanimous in the affirmative.

NOI Sent, Informal Conference Scheduled for 10/09/14 LEC

2833 – Francisco Silva

2898 – Jaime Lim

NOI Work in Progress

2810 – Francisco Meneses

2826 – Commstructure Consulting

2834 – Timothy Hagedorn

Cases Subject to OAR 820-010-0617

2827 – Ronald McKinnis / Stephen Haddock

A complaint was received from Mr. Haddock, PLS, Morrow County Surveyor alleging Mr. McKinnis failed to file two surveys in a timely fashion. The Committee discussed three instances of maps being filed far after pins were set regarding the OHV park situated between Wheeler, Grant and Morrow Counties, potentially creating a total of nine violations of ORS 209.250. The Committee directed the investigator to provide detailed maps of the surveys, and determined to assign a professional reviewer to assist in the investigation of this case. There was no further discussion.

2830 – Mark Wegener / Randy Cleveland

A complaint was received from Mr. Cleveland, SE, regarding Mr. Wegener, PE, who was offering engineering services while his registration was delinquent. There was also some suggestion in the investigation that Mr. Wegener improperly used the the structural engineer title. The Committee had reviewed this case at the June 12, 2014 Committee meeting, where it was clarified that the SE designation is not a title act with respect to Pes (only with respect to unlicensed person), but a practice act only for PEs. The committee also directed further

investigation. As a result, Mr. Wilkinson spoke with Todd Powell and obtained additional evidence as requested, including invoices detailing that Mr. Wegener practiced engineering under Mr. Powell's supervision during the time of his delinquency. The Committee recommended that the case be closed with compliance met. There was no further discussion.

2841 – Joseph A. Sturtevant / John Duval

On February 19, 2014, OSBEELS received a complaint form from John Duval, stating that Joseph A. Sturtevant was offering engineering services through his firm's website www.surface-tech.com. As evidence, he submitted screen shots of the website, dated February 17, 2014 with his complaint. Duval checked the OSBEELS website and found Sturtevant's license status to be delinquent. On March 17, 2014, a case was opened with Sturtevant as the respondent and a respond to allegations letter was sent on March 18, 2014. Sturtevant's license status became delinquent on July 20, 2010, and remained so until June 2, 2014.

When Mr. Sturtevant was made aware of this complaint, he made changes to the wording of his firm's website and reinstated his license. The Committee requested further investigation regarding Duval's practice of engineering while delinquent, including requesting invoices and bid sheets from the time he was delinquent. There was no further discussion.

2860 – Jonathan Oakes / OSBEELS

Mr. Oakes did not provide proper right of entry notice when performing land surveying. The Committee recommended a \$250 civil penalty based on the civil penalty factors. There was no further discussion.

2863 – David C. Popescu / Erric D. Jones

A complaint was received from Mr. Jones alleging Mr. Popescu, a PE, was performing land surveying without proper registration. Mr. Popescu set hubs at property corners and determined property lines. In addition, Mr. Popescu's PE seal was in violation, which he fixed. The Committee recommended a \$1,000 civil penalty along with a 30 day suspension of Mr. Popescu's PE license for unlicensed practice of land surveying. There was no further discussion.

2865 – Michael J. Peterson / OSBEELS

OSBEELS received a signed renewal form from Mr. Peterson, a PE, certifying that he had completed the required PDHs for the previous biennial renewal period of January 1, 2012 to December 31, 2013, which he claimed as a condition of the last biennial renewal period of January 1, 2013 through December 31, 2014. On July 25, 2013, Mr. Peterson was sent a letter requesting his participation in an audit of his PDHs; the letter was sent to the address of record and was returned by the US Postal Service on August 5, 2013, as "unable to forward." A second notification letter was sent on September 6, 2013, to the address of record. The letter was not returned by the US Postal Service and Mr. Peterson did not respond. Final notification was sent by certified mail on October 2, 2013, to the same address of record. The final notification letter was returned on October 11, 2013, by the US Postal Service as "unable to forward." A respond to allegations letter was sent December 17, 2013, to the last address of record and to a more recent address that was located through the website PeopleSmart. Mr. Peterson called investigators on December 27, 2013, and explained that he had a lot of address changes over the last few years. Through email correspondence, Peterson complied with the audit request by submitting a CPD Organizational Form and supporting documentation for 36 PDH; compliance

was met in terms of CPD documentation. After discussion, the Committee determined to issue a NOI to assess a \$250 civil penalty for violation of OAR 820-020-0605 – failure to update address with the Board. There was no further discussion.

2868 – Shaun Martin / OSBEELS

The Committee discussed that Shaun Martin, EI, had been before the LEC in prior case #2750. In that case, Mr. Martin signed a professional reference letter as a PE for a colleague's application for professional licensure with the State of Missouri. When the reference was checked, it was found that Mr. Martin as an EI was not qualified to provide a professional reference. Furthermore, Mr. Martin had forged an embossed seal and affixed it to the letter. For these violations, Mr. Martin signed a settlement agreement that included a 90-day suspension of his EI enrollment and a \$1,000 civil penalty. Upon his compliance, the case was closed January 29, 2013.

Mr. Hoffine recalled from the April 2012 informal conference that Mr. Martin claimed to have felt pressured by a superior officer to complete the letter. Mr. Martin also reported to the committee that he had already received severe military punishment. Mr. Wilkinson added that Mr. Martin claimed it was singular event and that he had exercised poor judgment. These mitigating factors were used to reduce Mr. Martin's penalty in settlement.

Subsequently, the minutes of Martin's informal conference were published, reflecting Mr. Martin's statements. A superior officer in the Army Corps of Engineers (ACOE) saw the minutes and contacted the Board, claiming that the statement Marin had made in settlement were false, including Martin's claim that he had already been disciplined for this conduct by the military. The complainant added that, in fact, Mr. Martin had told Army superiors that he WAS a registered PE with the Board, but that the Board had simply sent Mr. Martin's renewal to the wrong address, that Martin continued to use the PE title, and that Martin had created a false PE registration number. Mr. Martin has not responded to the allegations.

Board investigation has confirmed that Mr. Martin had received no military discipline for this conduct.

AAG Lozano informed the Committee that the Board's disciplinary authority in this case is issuance of a civil penalty, a reprimand (ORS 672.200), or both. The Committee discussed assessing \$1,000 for misleading the Committee during the informal conference and \$3,000 for falsely representing that he was authorized to practice engineering on three occasions. The Committee directed staff to issue a NOI to assess a \$4,000 civil penalty and a letter of reprimand for violations of ORS 672.020(1), ORS 672.045(1) and (2), OAR 820-020-0025(1).

2869 – Douglas Ferguson / OSBEELS

Mr. Ferguson is a land surveyor who is alleged to have been over five years late in filing two survey maps, resulting in two violations on two separate surveys. However, his response to allegations was not included in the Committee packet for review, so the Committee directed investigators to include Mr. Ferguson's response to the allegations with the case summary for the next Committee meeting.

2896 – Eric C. Johnson / OSBEELS

Mr. Johnson failed to disclose disciplinary action in the state of Nevada from June, 2000 on his comity application with OSBEELS, in violation of OAR 820-020-0045(4). He explained that he thought the question on the application, where he marked "no," only applied to his home state of

California. The Committee recommended a \$100 civil penalty, after considering the civil penalty factors. There was no further discussion.

Disclosure of Disciplinary Action (Information received pursuant to OAR 820-020-0045(4))

Benjamin Benson

Mr. Benson disclosed disciplinary action in Oklahoma to the Board on his application by comity relating to unlicensed practice. OAR 820-020-0045(4) allows for OSBEELS to discipline applicants disclosing suspension or revocation in other states; as neither of these occurred, OSBEELS lacks the authority to discipline Mr. Benson. The Committee determined that OSBEELS lacks the authority to take action.

Preliminary Evaluations

None

New Business

2626 – Tom Swart

Mr. Swart requested reconsideration of the civil penalty to which he agreed in a settlement agreement and final order. Mr. Hoffine noted that Mr. Swart was habitual in his failure to follow rules and statutes pertaining to land survey and had multiple complaints filed against him. Ms. Lopez pointed out that he created a payment plan himself in his settlement agreement, but had failed to make the payments he had set for himself, and that his account has already been sent to the Department of Revenue for collections. The Committee denied Mr. Swart's request. There was no further discussion.

Unfinished Business

2851 – Scott T. Ogren

The Board approved a Default Final Order assessing Ogren a \$500 civil penalty on January 23, 2014. The penalty was due on March 26, 2014. Ogren has not responded to the Order, nor has he responded to a Demand Payment Letter sent to him on June 11, 2014. Ogren is an Oregon resident.

The Committee determined to send this case to the Department of Revenue for collections. There was no further discussion.

2770 – Eric Strickland

The Board approved a Default Final Order assessing Strickland a \$1,000 civil penalty on May 13, 2014. The penalty was due on July 22, 2014. Strickland has not responded to the Order, nor has he responded to a Demand Payment Letter sent to him on August 1, 2014. Strickland is an Oregon resident.

The Committee determined to send this case to the Department of Revenue for collections. There was no further discussion.

2757 – Melvin L. Johnston

The Board approved a Default Final Order assessing Johnston a \$3,000 civil penalty on March 11, 2014. The penalty was due on May 22, 2014. Johnston has not responded to the Order, nor has he responded to a Demand Payment Letter sent to him on August 4, 2014. Johnston is an Oregon resident.

The Committee determined to send this case to the Department of Revenue for collections. There was no further discussion.

2740 – Yukimasa Aizawa

The Board approved a Default Final Order assessing Aizawa a \$3,000 civil penalty on January 23, 2014. The penalty was due on March 26, 2014. Aizawa has not responded to the Order, nor has he responded to a Demand Payment Letter sent to him on June 11, 2014. Aizawa's last known address is in Japan.

The Committee determined to send this case to the Department of Revenue for collections. There was no further discussion.

Law Enforcement Caseload Reports

The LEC offered no comments on total cases open (62), cases subject to collections (10), or on cases subject to monitoring (19).

The meeting adjourned at 5:00 p.m.