



Oregon

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

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RULES & REGULATIONS COMMITTEE

Minutes of Meeting

April 13, 2012

Members present:

Ken Hoffine

Amin Wahab

Jim Doane

John Seward (excused absence)

Carl Tappert (excused absence)

Staff present:

Mari Lopez

Jenn Gilbert

Joy Pariente

Others present:

Joanna Tucker-Davis, Assistant Attorney General

Steven Burger (observer)

Frank Sherkow

Michael Wing

In the absence of Chair Seward, Mr. Doane was requested to participate as a substitute member. As a result, Mr. Doane called the meeting of the Rules and Regulations Committee to order at 8:07 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

New Business –

OAR 820-010-0415 – Nature of the Examination for Professional Engineer

The Committee reviewed draft language proposed to revise Oregon Administrative Rule (OAR) 820-010-0415 – Nature of the Examination for Professional Engineer. The revised language removes reference to the Washington State Board of Registration for Professional Engineers and Land Surveyors and the obsolete Memorandum of Understanding (MOU). After a brief discussion, **the Committee approved the proposed draft rule for presentation to the May Board meeting to begin the rulemaking process.**

OAR 820-010-0715 – Construction Contractors Offering Engineering

The Committee briefly discussed a memo from staff regarding OAR 820-010-0715 – Construction Contractors Offering Engineering. As discussed during the March Board meeting, a law enforcement case was opened for allegations of unlicensed practice of engineering by advertising for and offering to perform engineering services were discussed. The Web site for the company did not identify the registered professional engineer that will perform the services constituting the practice of engineering. However, it was also noted that identifying the engineer

who will do all a firm's work is impossible. The Committee also reviewed the Oregon Revised Statute (ORS) 672.060(12) which states,

“(12) A construction contractor licensed under ORS chapter 701 that offers services constituting the practice of engineering if:

(a) The services are appurtenant to construction services to be provided by the contractor;

(b) The services constituting the practice of engineering are performed by an engineer or engineers registered under ORS 672.002 to 672.325; and

(c) The offer by the construction contractor discloses in writing that the contractor is not an engineer and identifies the engineer or engineers that will perform the services constituting the practice of engineering.”

After discussion, the Committee determined that no action is warranted at this time because the rule mimics the law; unless the Board would like to proceed in a legislative change to the ORS. There was no further discussion.

OAR 820-020-0040 – Examination Subversion

The Committee reviewed information from AAG Tucker-Davis regarding the Board's current rule regarding examination subversion. Due to the current contract with the National Council of Examiners for Engineering and Surveying (NCEES) and the Candidate Agreement, revisions to the current OAR 820-020-0040 should incorporate these requirements in terms of examination security. In general, the current rule only defines examination subversion as the use of any means that actually alters the results for the examination; whereas the NCEES policy is broader and includes the prohibition of items (e.g., cell phone) that may not actually alter the results, but would invalidate the examination according to NCEES policy. A draft rule will be presented during the June meeting for review.

Changes to Model Rules

The Committee was presented with an email from AAG Tucker-Davis regarding the recent changes to the Model Rules as they relate to the Administrative Procedures Act (APA). With the recent changes, the Board is not able to enforce the requirements for an answer as contained in OAR 820-001-0010 – Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases and OAR 820-001-0015 – Hearing Request and Answers: Consequences of Failure to Answer. In order to enforce these requirements for an answer, the Board must develop a list of circumstances, based on the complexity of the matter, that the Board will require a more specific response to an allegation. AAG Tucker-Davis will continue to work with staff on a list to provide to the Committee for additional discussion in June.

Unfinished Business –

SB126 Rulemaking Implementation

As a result of the February Committee meeting, AAG Tucker-Davis provided advice regarding the Board's authority to impose discipline against a certified water right examiner (CWRE) for violations of the rules of professional practice. Due to the lack of time and since Carl Tappert holds a CWRE but was unable to attend the meeting due to a schedule conflict, the Committee tabled the matter for discussion until the June meeting.

OAR 820-010-0226 – Educational Requirements to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveyor Intern (LSI) = FOM Request

Michael Wing, Associate Professor of Forest Engineering, Resources, and Management at the Oregon State University (OSU) was in attendance to discuss the draft rule. The intent of the

draft rule was to provide criteria for an alternate pathway to the Fundamentals of Land Surveying examinations, similar to the criteria for entrance to the Fundamentals of Engineering examination held in OAR 820-010-0225. Mr. Wing stated that his efforts included the review of the engineering technology requirements of ABET. He also pointed out that the ABET criteria did not include actual credit hours, but did contain the requirement of a minimum 1/3 of the total credit hours (but not more than 2/3 of the total credit hours) to contain technical content, natural resources, and integration. It was also noted that staff did not receive any comments following the March Board meeting regarding the draft language. As a result, staff will provide the draft language to five schools for their review and comment¹. These five schools are Oregon State University, Oregon Institute of Technology, University of Portland, Portland State University, and George Fox University.

Former Registrants – AAG Memorandum

Mr. Doane took the Committee into Executive Session as provided by Oregon Revised Statute (ORS) 192.660(2)(f) to discuss the advice provided by AAG Tucker-Davis. The Committee was provided with a confidential memorandum from AAG Tucker-Davis regarding former registrant seeking licensure. Upon returning to open session, it was noted that no action was taken during Executive Session.

As a result of the discussion held in February, the Committee was informed that certificates cannot be issued to interns because of the specific statutory meaning in ORS Chapter 672. The Board can however, issue a “document” to show the enrollment of internship. As a result of this information, **the Committee recommends modifying the direction given at the January 2011 Board meeting in which there was unanimous approval to reinstate the issuance of the EI and land surveying intern (LSI) certificates.**

Professional Experience (Nonprofit)

Frank Sherkow, Director of Outreach, Civil Engineering at OSU was in attendance to obtain clarification that experience accrued working for a nonprofit organization would count toward the experience requirements of PE registration. In December 2009, the Professional Practices Committee determined that experience gained under the supervision of a registered professional engineer may qualify, regardless if the experience gained was during part-time employment or through humanitarian efforts. The Committee noted that the rules for licensure in Division 10 of the OAR Chapter 820 do not specifically exclude volunteer work. After discussion, the Committee confirmed that individuals, including recent OSU graduates, that work as either volunteers or paid staff may count experience gained as long as the experience was acquired under the supervision and control of a professional engineer. The Committee also noted that the professional engineer should be familiar with OAR 820-010-0010(5) and (6) which contains the definitions of “responsible charge” and “supervision and control.” Furthermore, the Committee noted that “supervision and control” does not relate to the human resources aspect of a position (i.e., attendance, compensation, workplace policies, etc.).

The meeting adjourned at 10:22 a.m.

¹ Mr. Doane provided a draft of the rule language to the Professional Land Surveyors of Oregon (PLSO) following the meeting. Comments will be submitted to OSBEELS in early May.