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Mark P. Rossow, PhD, PE (retired)

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Ethics, Professionalism, and Disciplinary Actions: Case Studies

By

Mark P. Rossow

Introduction

The ten case studies given below are taken from actual disciplinary-action documents of a state licensing board for professional engineers and other related professionals. Even though the cases come from a single state board, they are intended to be representative of actions likely to be taken in other states—I have selected the cases with that goal in mind.

At the beginning of each case description, I have provided a summary. Then follows the actual language of the various legal documents—Stipulation and Order decrees, Cease and Desist orders and the like—but occasionally to improve readability I have omitted legal boilerplate, eliminated redundant statements, and replaced unnecessarily lengthy discussions by short paraphrased versions. The result, I hope, is an accessible and informative document aimed at professional engineers—not attorneys—concerned with questions of ethics and professionalism and how state licensing boards interpret and act on their statutory mandates. I have also eliminated names to preserve the anonymity of the people involved in the cases.

To me the primary lesson from these case studies is that simply being honest is not enough—although simple honesty would certainly have helped several of the engineers cited. You have to study the rules, too. You cannot be honest and obey the rules unless you know what the rules are. And once you know what they are, then you have to discipline yourself to follow them, even though at times that may annoy and inconvenience a client. One thing that comes through clearly in the case studies is that good intentions alone don't count.

A note on nomenclature

For convenience, I have used the following shorthand in the descriptions of the cases:

“Board”: State Board for professional licensure

“Committee”: Complaint Committee set up under the Board to investigate complaints of violations of State laws related to professional practice and licensing

“Respondent”: Person investigated by the Committee for a possible violation

Case #1

Summary: Even though Respondent never took any soil samples nor even visited the building site, he signed and certified a letter stating that the soils at the site meet certain code requirements for use of a drain-tile system. Respondent was charged with negligence as a professional engineer for misleading, inaccurate, and incomplete documentation on a report that Respondent signed and certified.

The Committee and Respondent have agreed that the matter may be resolved by the following Stipulation and Order as to the facts, violations, and enforcement actions in the case.

1. Stipulated Facts

- a. Respondent is currently licensed as a professional engineer by the State and was licensed at the time of the events described below.
- b. On July 15, 2010, a contractor asked the director of Building Inspection Services [of City X] if an alternative method of installing a foundation drainage system could be used on a single family home located in [City X]. The director told the contractor that he must provide evidence of the soil type and it must come in the form of a geotechnical report prepared by a licensed engineer. The contractor indicated that he would have such a report prepared. About an hour later, the contractor asked the director if he received an email with a letter from an engineer. The director did receive an email at 11:42 AM to which was attached a letter addressed to the contractor and signed and certified by Respondent and dated that same day.
- c. In the letter, Respondent stated: "As we discussed per our phone conversation, it appears that all of the footings and foundations for the above referenced project are placed on well drained washed rock and backfilled with sand material. In addition, the rear walkout area was backfilled with a great deal of sand, which will aid in the drainage. These materials are well drained sands and gravels that are classified as GP or SP in accordance with the Unified Soils Classification System (USCS). They fall within Soil Group 1, in Table R405.1 of the International Residential Code (IRC). Therefore, they meet the exception under R405.1 of the IRC for the requirement of a drain tile system."
- d. At 1:04 PM, the director emailed Respondent asking three questions.
 1. Did you personally visit the site?
 2. Can you provide the results of the soils report that indicate to what depth below the foundation the Class 1 soils extend?
 3. Are the Class 1 soils referenced in your letter common only to the area under the footings or are they commonly encountered through the area covered by the dwelling?
- e. At 2:26 PM, Respondent emailed the director, stating "No, we did not visit the site. I talked to [the contractor] and he sent me pictures of the site. [The contractor] explained what he had done. And the pictures supported what he had told me. We have worked with [the contractor] for nearly 20 years and have

confidence in his work. There was no soils report. My understanding is that the class 1 soils only extend to a depth of about 4 inches below the footings. I understand the native soils are clay (CL) or clayey sand (SC) glacial till.”

- f. In a letter dated September 10, 2010, to the Board Investigator, Respondent stated: “I had my doubts, but agreed to write a letter stating that, by definition, crushed rock and granular sand materials would fall under Group 1 Soils in Table R405.1. That was the intent of my letter. I was not intending to provide a geotechnical report, or to certify any inspection report. I was merely trying to state a fact. Specifically, that crushed rock and granular sand fall within Group 1 soils.
- g. Respondent’s letter attached to the email of July 15, 2010, was misleading and incomplete based on the fact that Respondent admitted that he never visited the site and that Respondent never took any soil samples to prove the types of soils he found.
- h. Respondent’s email sent to the director at 2:26 PM on July 15, 2010, was misleading, inaccurate and incomplete by making a statement on the soils and depths of the soils below the footing, when he did not visit the site.
- i. Respondent was negligent as a professional engineer by having a telephone conversation with the contractor and using pictures of the site to support the letter he signed and certified on July 15, 20201.

2. Stipulated Violations

The facts specified above constitute violations of negligence as a professional engineer, misleading, inaccurate, and incomplete documentation on a report that Respondent signed and certified for a single family home, in violation of State law.

3. Enforcement Action Order

The Board shall issue an Order in accordance with the following terms:

- a. Respondent is reprimanded for the foregoing conduct.
- b. Respondent shall pay a civil penalty of \$4,000 within sixty days of the Board’s approval of this Stipulation and Order.
- c. Within six months, Respondent shall successfully complete, and submit acceptable documentation thereof to the Board two hours of courses in professional ethics, which are approved in advance by the Committee.
- d. Within six months, Respondent shall successfully complete, and submit acceptable documentation thereof to the Board four hours of courses in building code instruction, which are approved in advance by the Committee.

Case #2

Summary: Respondent, though not licensed in the State (but licensed in a different jurisdiction), sent a fax cover letter with “PE” hand-written after his name. The letter accompanied papers concerned with the design and construction of a roadway in the State. Respondent was charged with practicing professional engineering in the State without being licensed by the State.

The Committee and Respondent have agreed that the matter may be resolved by the following Settlement Agreement and Cease and Desist Order as to the facts, violations, and enforcement actions in the case.

1. Facts

- a. Respondent is not currently licensed and never has been licensed by the Board as a professional engineer in the State.
- b. Respondent’s resume indicates that he was licensed as a professional engineer in a different state in 1980.
- c. On July 8, 2006, Respondent sent a fax cover letter to another person with “PE” after his name. Professional engineers in the State use PE after their names to indicate that they are licensed by the State to practice professional engineering in the State.
- d. The fax cover letter accompanied papers discussing issues concerning the design and construction of a roadway located in the State and the observation of its construction for the purpose of assuring compliance with certain specifications and design issues involving the roadway.
- e. By using PE after his name on a fax accompanying information associated with the construction of a roadway located in the State, Respondent tended to convey the impression that he is a professional engineer licensed by the State.

2. Violations

Respondent admits that the fact specified above constitute a violation of State statutes and are sufficient grounds for the action specified below

3. Enforcement Action

- a. Cease and Order. Respondent shall cease and desist from holding himself out and from practicing as a professional engineer in the State, and from any further violations of related State statutes until such time as he becomes licensed as a professional engineer in the State.
- b. Civil Penalty. Respondent shall pay a civil penalty of \$1,000 within sixty days of the Board’s approval of this Order.

Case #3

Summary: Respondent holds an architectural engineering degree, was licensed in the State as a professional engineer, but was not licensed in the State as an architect. Respondent prepared, signed and certified drawings for a warehouse in the State. Respondent was charged with practicing architecture without a license.

The Committee and Respondent have agreed that the matter may be resolved by the following Settlement Agreement and Cease and Desist Order as to the facts, violations, and enforcement actions in the case.

1. Facts

- a. Respondent is not currently licensed and never has been licensed by the Board as an architect in the State.
- b. Respondent is currently licensed by the Board as a professional engineer in the State.
- c. In a letter dated October 20, 2009, Respondent states: "You have the drawings that I signed and certified for the Frito-Lay warehouse in [City X]. Copies of these were sent to me in your letter of September 17, 2009. I have enclosed a copy for your further information. Please note on the cover sheet the sheets covered by my seal."
- d. Respondent prepared, signed and certified the drawings for the Frito-Lay Warehouse, [City X] project, dated August 10, 2009.
- e. Respondent's preparation of the drawings for the Frito-Lay Warehouse [City X] project, dated August 10, 2009, constitute the unlicensed practice of architecture.
- f. In a letter dated September 22, 2009, Respondent states: "3. When [City X] refused to honor my architectural engineering license we contracted with [an architectural company] of City X to conform the plans to local rules." And "6. When [City X] refused to honor my license we hired [the architectural company] of City X."

2. Violations

Respondent admits that the fact specified above constitute a violation of State statutes and are sufficient grounds for the action specified below

3. Enforcement Action

- a. Cease and Order. Respondent shall cease and desist from practicing architecture in the State and from any further violations of related State statutes until such time as he becomes licensed as an architect in the State.
- b. Civil Penalty. Respondent shall pay a civil penalty of \$1,000 within sixty days of the Board's approval of this Stipulation and Order.

Case #4

Summary: When Respondent applied to renew his license in the State, he reported that he had been disciplined by the licensing board in Oklahoma, but he did not report that he had also been disciplined by the licensing board in Missouri (The disciplinary action in Missouri was taken in response to the discipline action taken in Oklahoma). Respondent was charged with failure to disclose a material fact on a renewal application for license as a professional engineer.

The Committee and Respondent have agreed that the matter may be resolved by the following Stipulation and Order as to the facts, violations, and enforcement actions in the case.

1. Stipulated Facts

- a. Respondent is currently licensed as a professional engineer by the State and was licensed at the time of the events described below.
- b. On June 20, 2008, Respondent renewed his State professional engineering license. On the Application for License/Certificate Renewal for July 1, 2008 to June 30, 2010, Respondent affirmed that he had been disciplined by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors.
- c. Respondent renewed and affirmed the Boards' 2012 renewal application on-line on June 28, 2010. To continue the online renewal process, it asks the licensee, "Since July 1, 2008, have you had a license disciplined, denied, surrendered, suspended or revoked?" There is a button to check 'yes' or 'no' to this question. Directly below this question it asks the licensee, "I swear or affirm that I have read the foregoing renewal application and continuing education reporting screens and that the statements are true and complete." The next step to complete is a box to click that states, "I accept." Additionally it states, "(You must check this box to continue)." Respondent clicked on the box to continue as his professional engineer license was renewed on June 28, 2010. If Respondent had selected 'yes' to the question, "Since July 1, 2008, have you had a license disciplined, denied, surrendered, suspended or revoked," the system would not have let him continue and would have given him the error message: "You cannot renew your license online if you had a license disciplined, denied, surrendered, suspended or revoked. Please contact [the Board representative] for assistance."
- d. Respondent did not report that he had been disciplined by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors & Landscape Architects, on October 24, 2008.
- e. In a letter dated August 20, 2010, Respondent stated: "When I applied for renewal on-line, I relied on my memory as to when the Missouri disciplinary action began and whether I had informed the Board on a previous renewal. Obviously, my memory failed me and we are left with the current situation. As can be seen in the copy of settlement agreement with the State of Missouri enclosed with your letter, the disciplinary action in Missouri was taken as a result of the consent order entered into with the State of Oklahoma in May 2007. The resultant probationary

period in Missouri extends from January 1, 2009 to December 3, 2011 provided that I comply with the provisions therein. Based on the copy of 2008 renewal, it would appear that the Board was notified of the disciplinary action taken in Oklahoma.”

2. Stipulated Violations

The Committee’s position is that the facts specified above constitute violation of State statutes and are sufficient grounds for the action specified below. Further, the Committee’s position is that Respondent failed to disclose a material fact, the October 24, 2008 Missouri Board Settlement Agreement/Joint Agreed Disciplinary Order, and thus falsified or misrepresented information on the renewal application that he affirmed on June 28, 2010. Respondent’s position is that he denies that he falsified or misrepresented information in the on-line renewal application and that it was simply an oversight, nothing more. However, the Committee and Respondent wish to resolve this matter by mutually agreeing to the remedy specified below.

3. Enforcement Action Order

Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms: Surrender of professional engineering License. The Committee acknowledges that Respondent has voluntarily surrendered his professional engineer license on April 4, 2011. Respondent shall not reapply for licensure in this State as a professional engineer.

Case #5

Summary: State law requires the inclusion of certain mandatory language in plans for a 'clear wire' – wireless broadband project. Respondent prepared such plans but failed to include such language.

The Committee and Respondent have agreed that the matter may be resolved by the following Stipulation and Order as to the facts, violations, and enforcement actions in the case.

1. Stipulated Facts

- a. Respondent is currently licensed to practice professional engineering in the State.
- b. On April 29, 2009, Respondent signed the engineering plans for the 'clear wire' – wireless broadband project located in [City X]. Respondent did not incorporate the mandatory language as required by State statute for such projects.

2. Stipulated Violations

Respondent admits that the facts specified above constitute violations of State statutes and are sufficient grounds for the action specified below.

3. Enforcement Action Order

Respondent and the Board agree that the Board shall issue an Order in accordance with the following terms: Respondent is reprimanded for the foregoing conduct.

Case #6

Summary: Respondent was charged with failing to comply with a previous Board Stipulation and Order to which he had consented and agreed.

Based on the findings and recommendations of the Committee, the Board hereby makes the following facts and order.

1. Findings of Fact

- a. Respondent voluntarily agreed to enter into and execute the Stipulation and Order dated January 13, 2006.
- b. One of the conditions contained in Paragraph 4(b) of the January 13, 2006 Stipulation and Order was the requirement that Respondent successfully complete a course in professional ethics approved in advance by the Committee within one year of the date of the Stipulation and Order.
- c. On June 30, 2006, Respondent's professional engineering license expired and Respondent has not renewed his license.
- d. Respondent has not, as of the date of this Order for Additional Discipline, supplied any information, documentation, or evidence to the Board indicating that he has successfully completed the approved course in professional ethics referred to above.

2. Order

Based upon the evidence in the record, the Board does hereby order as follows:

- a. Respondent shall pay a civil penalty in the amount of \$1,500 within 30 days of the issuance of the Order;
- b. Before Respondent may apply for reinstatement of his professional engineering license, or otherwise apply for any other license or certificate issued by the Board, Respondent must (1) pay the civil penalty imposed by this Order, and (2) submit satisfactory documentation to the Board that he has successfully completed a professional ethics course approved in advance by the Committee as required by the January 13, 2006 Stipulation and Order. Completion of this professional ethics course shall not count toward any continuing education requirements;
- c. Upon compliance with this Order and the January 13, 2006 Stipulation and Order, Respondent may apply for reinstatement of his professional engineering license after providing to the Board satisfactory documentation of successful completion of the required professional development hours due from July 1, 2004, through the date when he applies for reinstatement and paying the outstanding reinstatement fees owed to the Board.

Case #7

Summary: Respondent was selected as part of the Board's biennial audit and was required to provide supporting documentation for the twenty-four PDH's that he claimed on his renewal application for his professional engineering license. When Respondent was unable to supply adequate documentation, he was charged with failing to meet State law requirements to provide supporting documentation of continuing education credits.

The Committee and Respondent have agreed that the matter may be resolved by the following Stipulation and Order as to the facts, violations, and enforcement actions in the case.

1. Stipulated Facts

- a. Respondent is currently licensed as a professional engineer by the State and was licensed at the time of the events described below.
- b. Respondent affirmed in the on-line renewal application on June 19, 2008 a total of twenty four PDH's for the 2008-2010 renewal period.
- c. In a letter dated August 29, 2008, the Board notified Respondent that he had been selected as part of the Board's biennial audit and was required to provide supporting documentation for at least twenty four PDH's that he affirmed for the 2008-2010 renewal period by September 30, 2008. Respondent did not respond to the continuing education audit letter by September 30, 2008.
- d. In a letter dated October 29, 2008, the Board notified Respondent a second time that he had been selected as part of the Board's biennial audit and was required to provide supporting documentation for at least twenty four PDH's that he affirmed for the 2008-2010 renewal period by December 1, 2008. Respondent did not respond to the Board's second continuing education audit by December 1, 2008.
- e. In a letter dated March 20, 2009, Respondent states: "I did a poor job of maintaining a hard copy of my records for my files. I do have the agenda for 2006 for which I attended but not for 2007. I have included that back-up with this letter."
- f. In a letter dated April 1, 2009 to the Respondent, the Board's Investigator stated: "I received your response letter on March 30, 2009. Unfortunately, you have not submitted the appropriate supporting documentation. The agenda is not clear on the conference course content."
- g. In the same letter dated April 1, 2009 to the Respondent, the Board's Investigator stated: "Acceptable supporting documentation must include some kind of paperwork showing your participation in a particular course or activity (certificates, registration receipts, copies of presentation, notes, etc.). The agenda you submitted does not show the course content for each session."
- h. In a letter dated April 18, 2009, to the Board, Respondent states: "For the year 2006 I have included a copy of the e-mail confirmation from the billing company. This e-mail was my confirmation that I paid for the conference and included an agenda specific to me. Per your request I have included a detailed description of the courses offered during the conference. I have circled and numbered the

sessions that I attended. I am also submitting a copy of the 2007 topic descriptions. Unfortunately I do not have a copy of my e-mail confirmation proving that I paid and went to the conference.

- i. In this same letter dated April 18, 2009, to the Board, Respondent states: "At this point this is all I will be able to provide for back-up for my education credit hours."

2. Stipulated Violations

Respondent admits that the facts specified above constitute violations of State statutes and are sufficient grounds for the action specified below.

3. Enforcement Action Order

Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

- a) Reprimand. Respondent is reprimanded for the foregoing conduct.
- b) Suspension of License. Respondent's professional engineering license shall be suspended until Respondent complies with the following conditions:
 - a. Respondent shall submit documentation acceptable to the Board of a minimum of twenty four professional development hours for the 2008-2010 renewal for continuing education. To meet the statutory requirement for documentation of these professional development hours, Respondent may submit acceptable documentation for a combination of: (a) professional development hours earned from 7/01/2006 to 6/30/2008 and (b) professional development hours earned on or after July 1, 2008. Completion of any courses or activities for the professional development hours earned on or after July 1, 2008 that are being submitted for the purpose of fulfilling the twenty four professional development hours required by this Stipulation and Order shall not count toward any continuing education requirements in the 2010-2012 renewal period or beyond, AND
 - b. Respondent shall pay a civil penalty of \$500 within sixty days of the Board's approval of this Stipulation and Order.
- c) Upon receipt of the Board's Order approving this Stipulation, Respondent shall deliver his license to the Board office within three business days. If and when the Board determines that Respondent has complied with the conditions listed above, the Board will issue an order vacating the suspension of Respondent's professional engineering license and restore his license to an unconditional status, and will return Respondent's license to him, provided that Respondent has met all other requirements for "current" license status.
- d) Prohibitions. During the period of suspension of Respondent's professional engineering license, Respondent shall not
 - a. Perform, or offer to perform, any activities in the State requiring licensure under State statutes; nor

- b. Use the title of “Professional Engineer/PE” in connection with his name, or solicit or contract to furnish work requiring licensure, or otherwise hold himself out as a professional engineer in the State.

Case #8

Summary: Respondent is licensed as a professional engineer in the State. The Board was notified by a public authority in the State that Respondent is in arrears in his child support payments. State law requires suspension of the professional engineering license under these circumstances.

1. Facts as stated by the licensing Board

- a. Respondent holds a professional engineering license from the Board.
- b. The Board received a Notice to Suspend Occupational or Professional License from a county in the State. The Notice advised the Board that Respondent is in arrears in court-ordered child support or maintenance payments or both in the amount equal to or greater than three times his total monthly support and maintenance payments.

2. Violation as stated by the licensing Board

State statutes state that if the Board receives a notice from a public authority responsible for child support enforcement under State statutes requiring the suspension of a license of a person found to be in arrears in child support or maintenance payments, or both, the Board shall suspend the license as directed by the notice.

3. Enforcement Action Order

- a. Respondent's professional engineering license in the State is **SUSPENDED**. During the period of suspension, Respondent shall not offer to perform or perform any services in the State that require licensure as a professional engineer, including holding himself out to the public as a professional engineer.
- b. During the period of suspension, Respondent shall remove the designation of being a licensed professional engineer from all his advertisements, business cards, business forms, and signage.
- c. The suspension shall take effect immediately and shall remain in effect until the Board receives notification from the agency that referred the matter to the Board confirming that Respondent is not in arrears in either child support or maintenance payments or confirming that Respondent is in compliance with a written payment plan regarding both current support and arrearages. The suspension shall only be lifted by a subsequent order of the Board which is based upon receipt of this notification.

Case #9

Summary: Respondent was not licensed as a professional engineer or professional geologist at the time he gave a report to a client, but Respondent used “PE” and “PG” following his signature on the report. Respondent noted on the report that his licensing applications were in progress. Respondent was charged with practicing as a professional engineer and as a professional geologist without a license.

The Committee and Respondent have agreed that the matter may be resolved by the following Stipulation and Order as to the facts, violations, and enforcement actions in the case.

1. Stipulated Facts

- a. Respondent was first licensed to practice professional geoscience in the State on October 3, 2006.
- b. Respondent was first licensed to practice professional engineering in the State on December 28, 2006.
- c. On December 8, 2005, Respondent distributed a report to a client regarding the proposed Dollar General Building project in [City X]. Respondent used the titles of P.E. and P.G. following his signature on this report. Respondent was not licensed as a professional engineer or professional geologist at the time he distributed this report to the client.
- d. Respondent states in his response letter dated May 4, 2006, that “the preliminary report was provided to the client and architect with a notation at the bottom of my signature on the report stating: State Professional License Applications in progress.”
- e. The Board office received Respondent’s applications for a professional geologist license and professional engineering license on May 5, 2006.

2. Stipulated Violations

Respondent admits that the facts specified above constitute violations of State statutes and are sufficient grounds for the action specified below.

3. Enforcement Action Order

The Board shall issue an Order in accordance with the following terms:

- a. Respondent is reprimanded for the foregoing conduct.
- b. Respondent shall pay a civil penalty of \$2,500 within sixty days of the Board’s approval of this Stipulation and Order.

Case #10

Summary: Respondent took his cell phone out of his pocket while taking the Fundamentals of Engineering Examination. Respondent was charged with improper conduct during the Fundamentals of Engineering Examination.

The Committee and Respondent have agreed that the matter may be resolved by the following Stipulation and Order as to the facts, violations, and enforcement actions in the case.

1. Stipulated Facts

- a. Respondent filed an Application for Admission to the Fundamentals of Engineering Examination on August 14, 2007, and was approved to sit for the October 27, 2007 examination. Respondent is subject to the jurisdiction of the Board with respect to the present matter.
- b. Respondent was dismissed from the examination because he took his cell phone out of his pocket during the examination. Respondent stated that he took out the phone to check the time during the examination, and he denies that he attempted to use the phone for communication. The Board has no evidence to contradict Respondent's denial.
- c. In advance of the examination, Respondent was mailed information describing policies and procedures for the exam, and also an Examination Admission Authorization letter. The letter stated that "All licensure candidates qualified to take any NCEES exam must review the following information before sitting for the exam. Examinees are required to sign their exam answer sheet before the exam starts to affirm that they have been provided this information, have read and understand the material, and agree to abide by the stated policies and procedures."
- d. Respondent admits that the announcement read in the examination room prior to beginning the exam included the statement that "Devices with copying, recording, or communication capabilities are strictly prohibited from the exam rooms." In addition, the cover sheet attached to the test booklet stated that "The following violations are ground for immediate dismissal from the exam and invalidation of your exam results. Having a cell phone in your possession."

2. Stipulated Violations

The facts specified above constitute violations of State law authorizing the Board to license, regulate, and discipline persons who apply for, or hold a professional engineering license in the State.

3. Enforcement Action Order

Respondent and the Committee agree that the Board shall issue an Order in accordance with the following terms: Respondent is not permitted to sit for the April 12, 2008, Fundamentals of Engineering Examination.