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THE STATE OF TEXAS

**TEXAS ENGINEERING PRACTICE ACT
AND RULES CONCERNING
THE PRACTICE OF ENGINEERING
AND
PROFESSIONAL ENGINEERING LICENSURE**



TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 IH 35 SOUTH
AUSTIN, TX 78741-3702

Email: info@engineers.texas.gov
Website: <http://engineers.texas.gov>

The material below is excerpted from Title 22, Part 6, of the Texas Administrative Code (See <https://engineers.texas.gov/downloads.htm#general> for the Part 6 document.)

Rules effective September 1, 2015

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Chapter 139: Enforcement

SUBCHAPTER A: ENFORCEMENT AUTHORITY

§139.1 General

The board will conduct inquiries into situations which allegedly violate the requirements of the Texas Engineering Practice Act (Act) and board rules concerning the practice of engineering, representations which imply the legal capacity to offer or perform engineering services for the public, and situations which are considered by the board to pose or have caused harm to the public. Situations that represent a repeat offense, a danger or nuisance to the public or cannot be reasonably resolved through voluntary compliance, will be disposed of by administrative, civil, or criminal proceedings as authorized by law.

Source Note: The provisions of this §139.1 amended to be effective May 20, 2004.

SUBCHAPTER B: COMPLAINT PROCESS AND PROCEDURES

§139.11 Complaints - General

- (a) The board shall initiate or receive and investigate a complaint against a license holder or other person who may have violated the Act or board rules.
- (b) The board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed with the State Office of Administrative Hearings or after the investigative file is closed. The following documents in an investigative file are releasable to a respondent or an attorney representing the respondent before the board during the informal resolution process of a complaint: copies of the original complaint documentation; copies of communications to or from the board and the complainant, the respondent, witnesses, technical experts used by the board to advise on the complaint issues, and private or public entities regarding requests for records, documents, or information regarding the complaint; and witness interview reports.
- (c) The provisions of the Act and the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code, shall apply to the conduct of all investigations and administrative actions in the board's processing of a complaint. In addition, the board may promulgate other procedural rules consistent with the Act or Chapter 2001, Texas Government Code.

Source Note: The provisions of this §139.11 amended to be effective December 21, 2008.

§139.13 Filing a Complaint

- (a) A person who wishes to make a complaint with the board may obtain assistance, filing information, or contact the board by:
 - (1) visiting the board website at <http://engineers.texas.gov>;
 - (2) sending electronic mail to peboard@engineers.texas.gov;
 - (3) sending written correspondence to: 1917 S. Interstate 35, Austin, Texas 78741-3702;
 - (4) sending fax to (512) 440-5715;
 - (5) telephoning the board office at (512) 440-7723; or
 - (6) visiting the board office located at 1917 S. Interstate 35, Austin, Texas.
- (b) A person may submit the complaint in writing through mail, electronic mail or facsimile.
- (c) A complainant may contact the board in person or by telephone to file a complaint. However, the complaint shall be submitted in writing containing sufficient information to determine jurisdiction. Upon receipt of the written complaint and supporting evidence, it will be logged and assigned a case number.
- (d) A complaint shall be on the forms provided by the board or in written format and contain the following information as applicable:
 - (1) complainant's name and contact information;
 - (2) description of the alleged violation;
 - (3) name and contact information of the subject or parties of the complaint, if known;
 - (4) sections of the Act and board rules alleged violated, if known;
 - (5) name and contact information of witnesses, if known; and
 - (6) sources of other pertinent information, if known.
- (e) Contact information may include, but is not limited to, name, address, telephone number, email address, business name, business address, business telephone number, and websites.
- (f) A complaint shall contain sufficient information for the board to determine whether it has authority to resolve the complaint.
- (g) Anonymous complaints will be received but will not be investigated unless sufficient information and evidence exists to demonstrate harm or potential harm to the public or violation of Act or board rules. Anonymous complaints that do not contain sufficient evidence and information to initiate an investigation will be logged and filed for information purposes only.

Source Note: The provisions of this §139.13 amended to be effective September 9, 2012.

§139.15 Processing a Complaint

- (a) Upon receipt of a complaint, the board staff shall assign the complaint a case number.
- (b) The board staff shall review the complaint. If the complaint does not contain sufficient information to determine whether the board has jurisdiction or is determined to be outside the board's authority, the board staff may interview the complainant to develop additional information. If the board staff determines that a potential violation exists, the board staff will proceed with the investigation. If board staff concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the board staff will recommend to the executive director that the investigation be closed and that the complaint be dismissed. If the executive director concurs with the recommendation, the complainant will be so notified and the investigation will be closed. The board staff shall write a dismissal explanation for the dismissed complaint and close the file.

(c) If a potential violation exists and the board has jurisdiction over and authority to resolve the complaint, the board staff shall set a priority for the complaint and initiate disciplinary proceedings against the subject of the complaint. In setting the priority for complaints, a complaint from the public or initiated by the board or board staff that alleges action that could potentially harm the public shall be rated highest priority and investigation for this type complaint takes precedence over all other complaints. Complaints rating highest priority may include, but are not limited to, those complaints involving incompetence, gross negligence, plan stamping, or practicing without a license. The board staff shall report status of the investigation and preliminary determination to the executive director and complainant within 45 days of receiving complaint that rates as a high priority.

Source Note: The provisions of this §139.15 amended to be effective December 21, 2008.

§139.17 Investigating a Complaint

(a) The board staff shall be responsible for investigating the complaint including determining the need for and obtaining any additional evidence that may be required to proceed with disciplinary action.

(b) Board staff and persons acting in the official capacity of the board have authority to:

- (1) informally or formally request information and documentation from the involved parties,
- (2) perform site visits or inspections to investigate the complaint,
- (3) contract technical consultants and other services to investigate and evaluate aspects of the complaint or evidence,
- (4) subpoena information, as required,
- (5) seek the assistance of local and state law enforcement authorities, and/or
- (6) seek out any other investigative action needed to assist in the resolution of the complaint.

(c) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act or board rules.

(d) At any time before a complaint is resolved, board staff may conduct further investigation including, but not limited to, obtaining second or third opinions, obtaining supporting documents, or interviewing other witnesses depending on the case at hand.

(e) If the board staff intends to dismiss the complaint because the investigation of the complaint does not produce sufficient evidence to substantiate a violation of the Act or board rules, the board staff will inform the complainant of the rationale for the determination prior to reporting the dismissal to the board.

(f) Withdrawal of a complaint shall not be a reason to terminate or disrupt an ongoing investigation.

(g) At least quarterly during the investigation of the complaint, the board shall notify the parties of the complaint of the complaint status unless the notice would jeopardize an undercover investigation and such notation shall be included in the complaint file.

Source Note: The provisions of this §139.17 amended to be effective December 21, 2008.

§139.19 Final Resolution of Complaint

(a) Upon the completion of an investigation, the board staff shall present to the executive director a report of investigation and recommendation of final resolution of the complaint. If sufficient evidence and documentation exists to substantiate one or more violations of the Act or board rules has occurred, the board shall proceed as prescribed in §139.31 of this chapter (relating to Enforcement Actions for Violations of the Act). These actions may include, but are not limited to, one or more of the following:

- (1) enter into an agreement of voluntary compliance;
- (2) agree to informal Consent Order or Agreed Board Order that may include an administrative penalty and/or compliance requirements;
- (3) referral of injunctive or criminal actions to the proper authorities;
- (4) referral to the State Office of Administrative Hearings which will result in a Final Order for dismissal or issuance of a sanction; or
- (5) other action as provided by law.

(b) If sufficient evidence and documentation does not exist to substantiate that one or more violations of the Act or board rules has occurred and disciplinary action is not warranted, the board staff shall recommend to dismiss the complaint and report the dismissal to the board.

Source Note: The provisions of this §139.19 amended to be effective December 21, 2008.

§139.21 Reporting Complaint Status to the Board

(a) The executive director shall provide a summary report on the status of all complaints at the regularly scheduled board meetings. The report shall include:

- (1) number of complaints filed;
- (2) number of complaints received in each category;
- (3) number of complaints initiated by the board;
- (4) number of complaints filed by persons other than the board;
- (5) the average length of time to resolve a complaint by totaling all the days accumulated for all resolved complaints and dividing by the total number of resolved complaints during the reporting period;
- (6) number of complaints that are unresolved, including:
 - (A) by those filed by the board, or
 - (B) by those filed by persons other than the board, and
 - (C) including the average length of time the unresolved complaints have been on file obtained by summing the days accumulated for all unresolved complaints and dividing by the total number of unresolved complaints;
- (7) number of dismissed cases; and
- (8) number of complaints resulting in disciplinary action including the disciplinary action taken and whether the action was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing.

(b) The executive director shall report dismissed complaints to the board and shall include in the report the following information:

- (1) name of the complainant,
- (2) name of the person who is subject of the complaint,

- (3) the basis of the complaint, and
 - (4) the reason for the dismissal of the complaint.
- (c) If the executive director determines that the complaint filed is frivolous or without merit, the case information will be classified as confidential and as such the information is not subject to discovery, subpoena, and or other disclosure. The board shall approve this action upon acceptance of the report and the case will then be closed. Closed cases will not be reconsidered for classification under this rule .
- (1) A "frivolous complaint" means a complaint that the executive director has determined:
 - (A) was made for the purpose of harassment; and
 - (B) does not demonstrate harm to any person.
 - (2) A complaint that is determined by the executive director to be "without merit" would include situations where a:
 - (A) professional engineer, individual, or firm has been determined to not be responsible or connected in any way with the alleged violative action in the complaint, as it relates to a violation of the Engineering Practice Act and or board rules; or,
 - (B) case has been determined to be outside the jurisdiction of the board; or,
 - (C) case has been determined to have been administratively opened in error.

Source Note: The provisions of this §139.21 amended to be effective December 21, 2008.

§139.23 Technical Consultants

- (a) The executive director may employ or contract with or gain technical advice from technical consultants, including, but not limited to, advisors, consultants, engineers and other persons to provide technical assistance in investigations and disciplinary proceedings. In the course of performing the person's official duties for the board, technical consultants are immune from civil liability and may not be subject to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken, except for when an action involves fraud, conspiracy, or malice.
- (b) The executive director may select technical consultants on the basis of their qualifications and may maintain a list of experts as technical consultants. The selection process may require documentation of a technical consultants qualifications including transcripts; verifiable experience records; references statements; texts, articles, and other published works; and compliance history and records. The board may interview prospective technical consultants. The board shall review a potential technical consultant's documentation to determine if the person's records demonstrate expert status and competency in a technical area. A technical consultant must inform the board and decline an assignment if the resource has personal knowledge of the complaint, parties involved in the complaint, or other conflicts of interest.
- (c) During the course of an investigation, the executive director may dismiss a technical consultant that does not possess the technical knowledge to assist in the investigation or for any other reason relevant to the investigation.

Source Note: The provisions of this §139.23 amended to be effective December 21, 2008.

SUBCHAPTER C: ENFORCEMENT PROCEEDINGS

§139.31 Enforcement Actions for Violations of the Act

- (a) Under the authority and provisions of §1001.201, §1001.202, and Subchapters J, K, and L of the Texas Engineering Practice Act (Act), the board shall take action against a person or entity, upon determination that censure is warranted, for a violation of the Act and/or board rules. An action may be composed of one or more of the following:
 - (1) revocation of a license;
 - (2) suspension of a license;
 - (3) probation of a suspended license;
 - (4) refusal to renew a license;
 - (5) issuance of a formal or informal reprimand;
 - (6) cease and desist order;
 - (7) voluntary compliance agreement;
 - (8) emergency suspension; or
 - (9) assessment of an administrative penalty under Subchapter K of the Act.
- (b) All actions issued by the board will take the form of a Board Order and shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all enforcement actions shall be published in the board newsletter and on the board website, may be issued in a press release, and shall be transmitted to the National Council of Examiners for Engineering and Surveying.
- (c) Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity, hereafter referred to in this section as "respondent," by personal service or by certified or registered mail of the alleged violation. The respondent shall be afforded an opportunity to present rebuttals, arguments and evidence to the board prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing.

Source Note: The provisions of this §139.31 amended to be effective December 17, 2013.

§139.33 Informal Proceedings

- If, after evaluation of the respondent's response a violation appears evident, the executive director shall initiate enforcement action. Before proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.
- (1) The executive director may also offer the respondent a Consent Order that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraphs (2) or (3) of this subsection will be followed.
 - (2) The respondent may request an informal conference to present additional evidence and discuss details of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint

an informal conference committee composed of one board member or board representative, the executive director or executive director's designee, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the details of the allegations and shall recommend:

- (A) dismissal;
- (B) a proposal for an Agreed Board Order for disciplinary actions that will be presented to the board for acceptance or rejection; or
- (C) scheduling of a formal hearing.

(3) Any board action under this subsection which is not informally disposed by Agreed or Consent Order, will be considered a contested case and will be handled in accordance with applicable law and board rules.

Source Note: The provisions of this §139.33 amended to be effective December 21, 2008.

§139.35 Sanctions and Penalties

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. The maximum administrative penalty shall be \$5,000.00 per violation. Pursuant to §1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of prior violations of the respondent;
- (3) the severity of penalty necessary to deter future violations;
- (4) efforts or resistance to efforts to correct the violations;
- (5) the economic harm to property or the environment caused by the violation; and
- (6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against *license holders* for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list 'suspension', all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

Figure: 22 TAC §139.35(b):

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTIONS
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation / \$5,000.00
	Failure to exercise care and diligence in the practice of engineering	§§137.55(b), 137.63(b)(6)	1 year suspension / \$2,500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension / \$5,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension / \$5,000.00
Licensing	Felony Conviction with incarceration	§ 139.43(a)	Revocation / \$5,000.00
	Fraud or deceit in obtaining a license	§§1001.452(2) 1001.453	Revocation/\$5,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year suspension/\$2,500.00
	Enter into a business relationship which is in violation of 137.77(Firm Compliance)	§137.51(d)	1 year suspension / \$1,500.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year suspension / \$4,000.00
	Failure to follow TDI qualified windstorm inspection procedures.	§1001.652; §§137.19 and 137.63(b)(1)	Reprimand / \$1,500.00
	Failure to design a structure associated with windstorm insurance that complies with cited windstorm code design criteria	§§1001.652, 1001.653; §§137.19 and 137.63(b)(1)	1 year suspension / \$3,000.00 / Roster Removal
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful	§§137.57(a) and 137.57(b)(1) or (2)	2 year suspension / \$4,000.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§§137.57(a) and 137.57(b)(3)	1 year suspension / \$1,500.00
	Conflict of interest	§137.57(c), (d)	2 year suspension / \$4,000.00
	Inducement to secure specific engineering work or	§137.63(c)(4)	2 year suspension /

	assignment		\$4,000.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year suspension / \$4,000.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year suspension / \$4,000.00
	Offer or practice engineering while license is expired or inactive	§§137.7(a) and 137.13(a) and (h)	1 year suspension / \$750.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year suspension / \$2,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand / \$2,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year suspension / \$2,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year suspension / \$2,500.00
	Aiding and abetting unlicensed practice or other assistance	§§137.63(b)(3), 137.63(c)(1)	3 year suspension / \$5,000.00
	Failure to report violations of others	§137.55(c)	Reprimand / \$2,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand / \$2,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand / \$2,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year suspension / \$2,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand / \$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension / \$4,000.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
	Failure to provide plans and/or specs to TDLR/RAS for assessment within 20 days of issuance	§§1001.452(5), 137.63(b)(1) and (2)	Informal Reprimand / \$750.00
Improper use of Seal	Failure to safeguard seal and/or electronic signature.	§137.33(d)	Reprimand / \$1,500.00
	Failure to sign, seal, date, or include firm identification on work	§§137.33(e), (f), (h), (n), 137.35(a), (b)	Reprimand / \$750.00
	Alter work of another	§§137.33(i), 137.37(3)	1 year suspension / \$2,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand / \$1,500.00
	Practice or affix seal with expired or inactive license	§§ 137.13(h), 137.37(2)	1 year suspension / \$750.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation / \$5,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year suspension / \$2,500.00
	Sealing work endangering the public	§137.37(1)	Revocation / \$5,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand / \$750.00
	Improper use of standards	§137.33(c)	Reprimand / \$750.00
Administrative	Failure to return seal imprint and/or portrait	§§133.97(e), (f); 137.31(a)	Reprimand / \$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand / \$150.00
	Failure to respond to board communications	§137.51(c)	Reprimand / \$750.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand / \$500.00

(c) The following is a table of suggested sanctions that may be imposed against a *person or business entity* for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
Use of "Engineer" title	§§1001.004(c)(2)(B)(C); 1001.301(b)(1)	Voluntary Compliance Cease and Desist	Injunctive / Criminal and \$1,500.00
Use of "P.E." designation, or claim to be a "Professional Engineer"	§1001.301(b)(2)-(6), (c), and (e)	Cease and Desist and \$2,500.00	Injunctive / Criminal and \$5,000.00
Offer or attempt to practice engineering (e.g., through solicitation, proposal, contract, etc.)	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405	Cease and Desist and \$2,500.00	Injunctive / Criminal and \$5,000.00
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)	§1001.405(e)	Voluntary Compliance	Cease and Desist and \$750.00
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name	§1001.405(e)	Voluntary Compliance	Injunctive / Criminal and \$5,000.00
Unlicensed practice of engineering	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; §§137.51(e), 137.77(a)	Cease and Desist and \$3,000.00	Injunctive / Criminal and \$5,000.00

(d) The following is a table of suggested sanctions that may be imposed against a *person or business entity* for violations of the Act or board rules involving firm registration. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SECOND OCCURRENCE
Offer and perform consulting engineering services without being registered	§1001.405; §137.77(a), (e)	Voluntary Compliance / \$500.00	Cease and Desist / \$1,500.00
Offer and perform consulting engineering services while registration was expired	§1001.405; §137.77(d), (e)	\$750.00	\$2,000.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§1001.405; §137.77(a), (e)	Voluntary Compliance / \$250.00	Cease and Desist / \$1,500.00
Failure to include firm name and registration number on engineering work	§137.77(h)	Voluntary Compliance	\$1,500.00
Failure to notify board of firm registration record modification	§137.73	Voluntary Compliance	\$750.00

(e) The following is a table of suggested sanctions that may be imposed against a *governmental entity and/or its representative* for violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Injunctive action could also result from a second or later occurrence of these violations.

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SECOND OCCURRENCE
Failure to engage a professional engineer in the construction of any public work involving professional engineering	§1001.407(1)	Voluntary Compliance	Cease and Desist / \$5000.00
Accepting engineering plans, specifications and estimates that were not prepared by a professional engineer	§1001.402	Voluntary Compliance	Cease and Desist / \$5000.00
Failure to ensure that the engineering construction is performed under the direct supervision of a professional engineer	§1001.407(2)	Voluntary Compliance	Cease and Desist / \$5000.00

Source Note: The provisions of this §139.35 amended to be effective December 17, 2013.

SUBCHAPTER D: SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

§139.41 License Holder with Renewable, Expired License

A license holder whose license has expired for nonpayment of renewal fees continues to be subject to all provisions of the Act and board rules governing license holders until the license is revoked by the board or becomes non-renewable under §1001.353(d) of the Act.

Source Note: The provisions of this §139.41 amended to be effective May 20, 2004.

§139.43 License Holder with Criminal Convictions

(a) The board shall follow the requirements of Chapter 53, Texas Occupations Code, and shall revoke the license of any license holder incarcerated after licensure as a professional engineer as a result of:

- (1) a felony conviction,
- (2) violation of felony probation or parole, or
- (3) revocation of mandatory supervision.

(b) The board, after it considers the factors provided in Texas Occupations Code §53.022 and §53.023, may take any of the actions set out in §139.31 of this chapter when a license holder is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the license holder's duties and responsibilities as a professional engineer.

(c) Any license holder whose license has been revoked under the provisions of this subsection may apply for a new license upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Chapter 53, Texas Occupations Code.

Source Note: The provisions of this §139.43 amended to be effective December 21, 2008.

§139.45 Restitution

In addition to or in lieu of an administrative penalty, the board may order a license holder to pay restitution to a consumer as a result of an agreement resulting from an informal settlement conference. The amount of the restitution may not exceed the amount paid by the consumer to the person for a service regulated by the Act.

Source Note: The provisions of this §139.45 amended to be effective May 20, 2004.

§139.47 Probation

As part of a disciplinary action for violating the Act and board rules including, but not limited to, negligence, incompetence, or endangerment to the public, the board may prescribe conditions of probation for each probated suspension on a case-by-case basis depending on the severity of the violation that will include reporting requirements, restrictions on practice, and/or continuing education requirements as applicable as described in this subsection.

- (1) The board will determine the reporting requirements for each probated suspension and will include a list of board probation requirements and schedule for completion of those requirements in which the board may require the license holder to submit documentation including, but not limited to, client lists, job assignments, designs, proof of continuing education participation, restricted practice reports, and other documents concerning the practice of engineering to demonstrate compliance with the conditions of probation. As a condition of probation, the license holder shall accept that schedule deadlines are final and no extensions or revision shall be granted.
- (2) Board will receive and date stamp documentation on the day received and track compliance with probation requirements for each probated suspension. The board shall honor postmarks for date of submittal; however, if not received by the required deadline, the license holder shall have the burden of proof to demonstrate documentation was submitted by the schedule deadline.
- (3) As a condition of probation, the board may restrict the area of practice of the license holder. The board may require the license holder to practice under the supervision and mentorship of another professional engineer when performing engineering in prescribed areas.
- (4) As a condition of probation, the board may require the license holder to obtain additional continuing education in addition to the minimum requirements of §137.17 and may prescribe formal classroom study, workshops, seminars, and other specific forms of continuing education.
- (5) Failure to comply with probation requirements shall result in lifting of probation and suspending of the engineering license for the remainder of the suspension period.

Source Note: The provisions of this §139.47 amended to be effective May 20, 2004.

§139.49 License Suspension/Revocation Based on License Holder's Status Review.

(a) The board may review the status of a license holder the board believes:

- (1) may have been issued a license through fraud or error; or
- (2) may constitute a threat to the public health, safety, or welfare.

(b) The board may, as set out in §139.31, of this chapter (relating to Enforcement Actions for Violations of the Act) suspend or revoke a license held by a person whose status is reviewed under this section.

Source Note: The provisions of this §139.49 amended to be effective January 1, 2006.

§139.51 License Suspension Based on Delinquent Child Support

Pursuant to Texas Family Code, Chapter 232, on receipt of a final order by the OAG (Office of the Attorney General) regarding delinquent child support, the board must suspend a professional engineer license until the OAG notifies the Board that the obligor has paid the child support, established a repayment schedule, has been granted an exception as part of a court-supervised plan or successfully contested the denial of licensure.

Source Note: The provisions of this §139.51 added to be effective September 20, 2009.

SUBCHAPTER E: HEARINGS

§139.61 Contested Case Hearings

The State Office of Administrative Hearings shall conduct all formal hearings and contested cases in accordance with the Administrative Procedures Act, Chapter 2001, Texas Government Code and Title 1, Chapter 155, Texas Administrative Code.

Source Note: The provisions of this §139.61 amended to be effective May 20, 2004.

§139.63 Extensions of Time

The Executive Director may enter into an agreement with parties to a contested case to modify time limits as provided under the APA, Texas Government Code §2001.147.

Source Note: The provisions of this §139.63 added to be effective September 20, 2009.

DISCIPLINARY ACTIONS

Examples of Disciplinary Actions Taken by the Board

The following examples have been taken from the Texas Board of Professional Engineers website (<https://engineers.texas.gov/disciplinary.htm>).

Case 1

Violation: Respondent practiced engineering while his Texas professional engineer license was expired. Respondent's Texas professional engineer license expired and was not renewed for four months during which, Respondent signed and sealed engineering construction plans. Respondent aided and abetted an inactive engineering firm in the illegal practice of engineering. Respondent failed to act as faithful agent in that he misrepresented to the client for the Project he was legally able to offer and provide engineering services.

Act/Rule Violated: Tex. Occ. Code §§ 1001.401(c) and 1001.405(b)(1), (e)(1), and (e)(3) and 22 TAC §§ 137.7(a), 137.37(a)(2), 137.63(a), (b)(4), (b)(6), and (c)(1), and 137.77(a) and (d)–(e)

Resolution: Two Year Probated Suspension contingent on payment of Administrative Penalty in the amount of \$4,420.00 and successfully complete Texas Tech University Engineering Ethics II Course.

Case 2

Violation: Respondent failed to report to the Board his criminal convictions. The Board performed a Criminal History Record Check, as required by the Act, §1001.3535(a), which revealed information Respondent had been convicted of two misdemeanor crimes. Respondent failed to timely notify the Board of his felony criminal conviction, within required 30 days of the conviction. Therefore, Respondent failed to conduct engineering in an honest and ethical manner.

Act/Rule Violated: 22 TAC §§ 137.5(c) and 137.63(a)

Resolution: Formal Reprimand and successfully complete Texas Tech University Engineering Ethics I Course.

Case 3

Violation: Respondent neglected to sign and seal engineering drawings in an inspection report. Respondent failed to properly include the firm registration number on engineering documents, implement reasonable measures to secure his seal from unauthorized use, and notify the Board of change in his employment status within the allotted timeframe.

Act/Rule Violated: Board Rules 22 TAC §§ 137.33(d), (f), and (n), 137.5(a), 137.63(b)(2), 137.73(a)(5), and 137.77(a), (d), and (h)

Resolution: Formal reprimand and a \$975.00 administrative penalty.

Case 4

Violation: Respondent falsely certified that he had completed the required Continuing Education credits on his last license renewal when he had not done so and failed to timely respond to Board inquires. Because he no longer desired to practice engineering in Texas and to resolve a pending disciplinary case, Respondent signed a Voluntary Surrender of his license which resulted in the revocation of his license.

Section/Rule Violated: 137.17(c), (m) and (p) (2) and (3), and 137.51 (c).

Resolution: Respondent's Texas engineer license was revoked effective May 21, 2015.

Case 5

Violation: Respondent signed and sealed engineering work certifying that the work had been completed as designed which was incorrect and thus misleading.

Section/Rule Violated: 137.57(b) (3).

Resolution: One year probated suspension, and a \$1,000.00 administrative penalty.

Case 6

Violation: Respondent, during a time when he was licensed to practice engineering in Texas, prepared engineering design work for the Dallas Cowboys Training Facility which subsequently collapsed during a violent weather event severely injuring several Dallas Cowboys personnel. The Board alleged several deficiencies in the engineering design, all of which Respondent vigorously disputed. However, without admitting any wrongdoing, but desiring to resolve and end this disputed matter, Respondent and the Board agreed to the terms and entry of an Agreed Board Order.

Section/Rule Violated: The Board alleged violations of Board Rules 137.55 (b), 137.57 (b) (3), 137.63 (b) (1) and 137.63 (b) (6).

Resolution: Respondent agreed to pay to the Board \$3,000.00 for the cost of the investigation and prosecution of the case, as well as a \$50,000.00 administrative penalty to the Board should Respondent be found to have violated any states engineering rules or standards which involve the health, welfare or safety of such state's public during the ten year period following the entry of the Agreed Board Order and further agreed to not apply for licensure in Texas for five years following the entry of the Agreed Board Order.

Case 7

Violation: Respondent signed and sealed engineering work and failed to include his firm registration as well the fact that his firm registration had expired. Thus, Respondent aided and abetted another entity in the unauthorized practice of engineering.

Section/Rule Violated: 1001.401(c); 137.33(n), 137.51(d), 137.55(c), 137.63(a), 137.63(b)(2), and (b) (3) and 137.77 (a), (d), (e) and (h).

Resolution: Two year probated suspension, and a \$2,000.00 administrative penalty and completion within six months of an engineering ethics course.

Case 8

Violation: Respondent, a registered architect, practiced engineering by signing and sealing with his Architect's seal engineering work on building renovation plans.

Resolution: Cease and Desist Order and a \$3,000.00 administrative penalty.

Case 9

Violation: Respondent failed to act as a faithful agent to his employer in that he used his employer's equipment for his own business purposes while still employed at the engineering firm, and thus failed to engage in professional business activities in an honest, truthful and ethical manner.

Section/Rule Violated: 137.63 (a) and 137.63 (b) (4) and (5).

Resolution: One year probated suspension, and a \$3,250.00 administrative penalty and completion within six months of an engineering ethics course.

Case 10

Violation: Respondent was hired to prepare foundation repair and drainage plans by a client who became dissatisfied with the quality of the workmanship, and alleged that Respondent had failed to personally supervise all of the repair/drainage work.

Section/Rule Violated: 137.57(b) (3), 137.63(b) (1), and 137.63(c) (6).

Resolution: Two year probated suspension, and a \$5,720.00 administrative penalty and completion within six months of an engineering ethics course.