

NEVADA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

**Minutes of the Regular Board Meeting
Held in Reno, Nevada, Thursday, November 8, 2018**

Chairman Robert LaRiviere declaring a quorum present, called the meeting to order at 9:30 am, in the Ed and Mary Alice Pine Board Room at 1755 E Plumb Lane Suite 135, Reno, Nevada 89502. Board members present were chairman Robert LaRiviere, PLS; vice chair Karen Purcell, PE; Kent Anderson, PE; Brent Wright, PE/SE; Angelo Spata, PE; Tracy Larkin-Thomason, PE; Thomas Matter, public member; Gregory DeSart, PE. Also present were Patty Mamola, PE, Executive Director; Louisa Kern Administrative Assistant; Murray Blaney, Compliance Officer; Jake Wolf, Compliance Investigator; Chris MacKenzie, Board Legal Counsel. Guests present were David Giacomini, PE (Civil Engineer) #24367, Kimley-Horn and Ashley Verling, PE (Civil Engineer) #24779, Wood Rodgers, Inc.

1. Call to Order and Roll Call of Board Members

All board members were present with the exception of Mr Kidd who was excused.

2. Pledge of Allegiance

3. Public Comment Period

There were no public comments

4. Introductions and Guest Orientation

Those present introduced themselves.

5. Discussion and possible action on approval of meeting minutes (For possible action)

a. September 13, 2018, Public Hearing, Intent to Act Upon Regulations minutes

Mr LaRiviere asked if anyone had any questions or edits to the Public Hearing minutes. There were none.

18-70 A motion was made by Mr Anderson, seconded by Ms Larkin-Thomason to approve the the Public Hearing minutes. The motion passed unanimously.

b. September 13, 2018, Regular Board Meeting minutes

Mr LaRiviere asked if anyone had any questions or edits to the Regular Board Meeting minutes. Mr MacKenzie suggested an edit.

18-71 A motion was made by Mr Anderson, seconded by Ms Larkin-Thomason to approve the the Regular Board Meeting minutes with the suggested edits made. The motion passed unanimously.

6. Discussion and possible action on financial statements. (For possible action)

a. July 2018 financial statements

Ms Mamola said there had been errors in the July 2018 statements that were presented at the September 13, 2018 board meeting. She said those errors had been corrected and reviewed the statements for the board. Ms Mamola added that the report had required manual input – which was the cause of the errors – and that she was looking at statements being auto-generated from the accounting software to avoid mistakes in the future. She said that report formatting may need to be adjusted and that she would consult with APOC for approval before making a definitive change.

b. August 2018 financial statements

Ms Mamola reviewed the August 2018 statements. Mr LaRiviere asked for clarification on the payroll amount being higher by \$20,000 over previous months. Ms Mamola responded that three pay periods as opposed to the norm of two fell in the month of August.

c. September 2018 financial statements

Ms Mamola reviewed the September 2018 statements. Mr Matter asked why the travel actual amount seemed high in September. Ms Mamola responded that expenses related to the NCEES annual meeting (held in August) tended to fall in the following month. Ms Mamola added that board member expense reports, if accumulated over an extended period of time can impact the actual amount on the month of payment.

Mr LaRiviere asked that board members try to submit expense reports within 7-10 days of a board meeting or conference.

18-72 A motion was made by Mr Anderson, seconded by Ms Larkin-Thomason to approve the the financial statements. The motion passed unanimously.

7. Discussion and possible action on compliance reports by Compliance Officer.
(For possible action)

a. Compliance officer report on complaints being investigated.

Mr Blaney said that there were fifteen cases to report on. Case number 20180002, relates to issues with forensic reporting by a forensic engineer. This investigation is complete. Mr MacKenzie added that a proposed stipulated agreement had been sent to the respondent.

Mr Blaney said the next case, number 20180003, is regarding being a faithful agent and representing the client's best interests, had been dismissed by the board liaison.

Mr Blaney continued saying an allegation of forgery is the next case, number 20180006. A stipulated agreement signed by the respondent will be presented for consideration by the board today.

Mr Blaney said an allegation of plagiarism is at the center of case number 20180010. Ultimately though, after a detailed investigation, the case was dismissed. There were a lot of similarities but the plagiarism is difficult to prove.

Mr Blaney said case number 20180011 is a result of a self-report of disciplinary action by another state. We wanted to monitor this engineer's activities in Nevada and a stipulated agreement related to that will be considered by the board today.

Mr Blaney stated that case, number 20180014, is a result of the deterioration of the working relationship between two engineers. We needed additional information from the complainant which we have received and reviewed and the case is just about ready to go to board liaison review. Mr Spata asked that in situations where one engineer complained about another and it turns out to be a false accusation, is there anything done to the engineer making the accusation. Mr Blaney said that if the investigation found an element of malicious intent there likely would be some correspondence from the board relating to a code of conduct. Ms Mamola added that action could be considered against a complainant if any malicious action put public safety in jeopardy or was contrary to the code of conduct.

Mr Blaney said that case number 20180015 is another self-report of disciplinary action by another state, and that a stipulated agreement will be presented for board consideration at today's meeting.

Mr Blaney said that 20180017 relates to issues involving an Employee and their Supervisor at a public entity. The case had been reviewed by a board liaison and the recommendation has come back that the case be dismissed.

Mr Blaney stated that case number 20180018 also had a recommendation of dismissal by a board liaison. The complaint had been made whole by the respondent PLS and there were also a number of extenuating circumstances that were impacting the surveyor in responsible charge and the operations of their firm.

Mr Blaney said case 20180019 relates to allegation that a design report was produced specifying certain materials with bias without considering other materials. He added that there was a sizeable amount of information to be digested in this case and that the investigation is ongoing.

Case number 20180020, Mr Blaney said, involves significant cracking in the floor of the home and it was traced back to a design flaw. We have the formal response, but now it looks like an attorney for the respondent's insurance company is getting involved, so we are waiting for some more information to come back.

Mr Blaney said that 20180021 relates to incompetence in producing an elevation certification it is a survey for a house pad, with the measurement seeming to be outside the building code parameters. He continued to say we are waiting for some additional clarification from the complainant, but there does appear to be something there.

Mr Blaney stated that case 20180022 seemed to be a monetary issue where a topo map is being withheld but the complainant believes that they have paid for it. He continued to say it looks like monetary dispute, and typically the board doesn't get involved with those, but staff will fully vet the complaint for the sake of public interest to make sure there is nothing else there.

Mr Blaney said complaint case number 20180023 is another involving a forensic report. He said it relates to a forensic engineering report on a roof failure in Lake Tahoe during the winter of 2016-2017. It is alleged by the complainant that the report had critical admissions and unsupported conclusions, and the case is currently in the investigative stage.

Mr Blaney stated last case; case number 20180024, on the surface appeared to be another monetary issue involving the updating of plans to comply with code changes. The complainant believes the engineer is asked an excessive amount for the update. We will follow to see what the story is.

Mr DeSart said he noticed that there were a few forensic engineering issues and asked if there were any noticeable patterns in the complaints. Mr Blaney replied that at first view it would seem that the omission of keys facts is a commonality. Mr Blaney added that historically there hasn't been many forensic report complaints and that it is interesting that we have a couple ongoing at the same time.

b. Consideration of probation reports:

| | |
|--------------------------|----------------------------|
| Michael Keegan, PE #8821 | Larry J Sanchez, PE #15752 |
| Michael Regan, PE #11081 | Mohan B Upasani, PE #11760 |

There were no comments regarding the probation reports presented.

8. Discussion on Board Counsel Report (Discussion only)

a. Discussion of board's Rules of Practice

Mr MacKenzie said that this item is to give some of the newer members and some members that have been around for a while an update on Rules of Practice. He referenced a letter in the board packet, dated December 22, 2016, written by him as the most recent update of the board's Rules of Practice. He added that the Rules of Practice are required to be filed with the Nevada Secretary of State. Mr MacKenzie added the rules are periodically updated and that there are a couple of items in the current filing that may need to be reviewed and addressed. He said an item to note is that previously as board counsel he would prosecute the cases, but now it has been directed by the AG's office that you cannot have the same person advising the board and also prosecuting a case. Mr MacKenzie said going forward we will bring in a deputy AG to come and prosecute a case should it go to a formal hearing.

Mr MacKenzie said the complaint process follows the rules outlined, and that his review is to provide board members a refresher on what happens when a complaint is received. Mr MacKenzie reviewed the Rules of Practice and took questions from the board (Rules of Practice and Exhibits are attached).

Mr Spata asked if when the board hears a case, is the determination made by a vote, and if the vote was by majority rule. Mr MacKenzie replied that is was by a majority vote.

Mr Spata said that it appears there is ample opportunity for the person that is being accused to be heard through the process, but what are the complainant's options if they do not agree with an outcome. Mr MacKenzie said that it is important to note that the complainant is not a party to the case. It is between the board and the respondent. The complainant provides the initiating information, they do not have standing, and they are not prosecuting the case. It is up to the board or not to determine whether it is something they feel is appropriate to move forward with.

Mr Spata asked if the board had a second review process if a complainant felt like they weren't getting a satisfactory resolution or believed their complaint wasn't heard properly, and if Mr MacKenzie reviewed cases before dismissal. Mr MacKenzie said that the system isn't set up that way, and that the board or its designated board liaison is the arbiter. He added that he would give input on facts if requested. Mr MacKenzie continued to say that the board is relying on and needs to have confidence in the recommendation made the designated board liaison and the staff of the board.

Mr Matter asked if there was an egregious issue or public safety concern involved in a complaint, does the board have the ability to suspend a license during or prior to the hearing process. Mr MacKenzie said that the board does have that ability by statute if there is belief, that by continuing to practice, the licensee poses a danger to public health and safety. He added that we would have to do a finding for that, but yes it does allow us to issue a decree order prior to holding a hearing.

9. Discussion and possible action on stipulated agreement for Roger Blair, PE, license number 24744, complaint number 20180011. (For possible action)

Mr MacKenzie reviewed the facts related to complaint number 20180011 for Roger Blair, PE, license number 024744. He also stated the relevant Nevada statutes and administrative code relative to the complaint and disciplinary action against Mr Blair. Mr MacKenzie continued to outline the terms of the stipulated settlement agreement. Ms Mamola noted that additional monetary penalties had not been imposed on Mr Blair and that the objective of the settlement and the probation term outlined was to monitor the engineer's project activity in Nevada as an element of public protection.

Mr MacKenzie stated that although, per the terms of the agreement, the license suspension is stayed, if the respondent were to violate the Texas Consent Order or the Nevada Stipulated Agreement, if the board believed it appropriate, the stay could be lifted and a suspension put in place without the need to go to a formal disciplinary hearing.

Mr DeSart asked if the respondent were to violate agreed to terms, what the process is to enact a suspension if there is no formal hearing. Mr MacKenzie responded that it would need to be an agenda item at a board meeting and the respondent would be given the opportunity to be heard, and that it would require a motion and vote by board members. He added that the stipulation is an agreement by the licensee being disciplined that if they violate the terms the stay can be lifted without the burden of a formal hearing.

18-73 A motion was made by Mr Anderson, seconded by Mr Matter to approve the the stipulated agreement as written. The motion passed unanimously.

10. Discussion and possible action on stipulated agreement for Lazell Preator, PE, license number 14982, complaint number 2018006. (For possible action)

Mr MacKenzie reviewed the facts related to stipulated terms of the agreement for complaint number 20180011 regarding disciplinary action against Lazell Preator, PE, license number 014982.

18-74 A motion was made by Ms Purcell, seconded by Mr Spata to approve the

the stipulated agreement as written. The motion passed unanimously.

11. Discussion and possible action on stipulated agreement for Mingqiao Zhu, PE, license number 15943, complaint number 20180015. (For possible action)

Mr MacKenzie reviewed stipulated agreement terms and the facts relating to discipline being imposed on Mr Mingzhao Zhu, PE, Nevada license 015943; complaint case number 20180015.

18-75 A motion was made by Ms Larkin-Thomason, seconded by Mr Anderson to approve the the stipulated agreement as written. The motion passed unanimously.

12. Discussion and possible action on audit report for fiscal year 2017-2018. Brian Anderson, Wipfli CPAs and Consultants will be available for questions. (For possible action)

Mr LaRiviere asked Mr Anderson to review the audit report included in the board packet and give his overall opinion. Mr Anderson gave an overview and said that based on their analysis all financial information was fairly presented and that everything looked good. He added the opinion issued in the report was that there is the proper internal control and that there are no compliance issues. Mr Anderson asked if there were any questions from the board.

Mr DeSart said that the board had discussions about the categorizing of available funds that were earmarked for deferred expenses, and asked if there was a more appropriate designation so to separate from the board's regular reserves.

Mr Anderson replied that it may be applicable for the board to commit or assign those funds that are designated for a specific purpose. He added that a portion of funds had been assigned, but to reduce the assigned balance the board would need to formally commit dollar amounts to specific projects. Mr Anderson continued to say that to get proper categorization before the next audit, the formal action would need to take place before June 30, 2019.

18-76 A motion was made by Mr DeSart, seconded by Ms Purcell to approve the the audit report for FY 2017-2018. The motion passed unanimously.

13. Discussion and possible action on administrative report by Executive Director. (For possible action)

a. Approved licensees report

Ms Mamola reviewed the approved licensee report enclosed in the board packet and asked for any questions from the board. There were none.

b. Action items related to 2017-2021 Strategic Plan

Ms Mamola said that included in the board packet is a copy of the board approved Strategic Plan executive summary that shows our four goals: 1) Outreach; 2) Licensure; 3) Regulation; and 4) Operational Excellence. Ms Mamola continued to say that it also includes the action items and tactics related to those goals. She added that this item is just a reminder to board members so if they have any thoughts, ideas, or comments let staff know so we can work on an idea or include it.

c. Governor's Finance Office Department of Internal Audits request for response on recommendations made to regulatory boards

Ms Mamola said that a letter in response to the recommendations, after review by board counsel and approval by the legislative committee, was sent on October 30, 2018.

d. New Mexico Governor Executive Order

Ms Mamola said she had included a copy the Executive Order as an informational item. She continued to say that some of the language used was apparently issued by an organization called the Institute for Justice. She said the board should be aware as this may be a precursor to desired changes and movements toward regulatory boards.

Mr LaRiviere asked if many other boards have the expedited comity license applications to levels that the Nevada board has achieved, in being well under the 30 day requirement. Ms Mamola said she had reached out to a number of boards, and unfortunately a number gave the impression that the timeframes didn't apply to them, but added that New Mexico did say they were compliant. She also said that there are a couple of boards that have a faster turnaround than Nevada, where if the engineer has an NCEES record and is a "model law" engineer, those applicants are licensed within 24-48 hours of the board receiving their record. Ms Mamola said that she was on the MBA Executive Director Committee for NCEES and that inaction by some MBA's toward expediting the process of licensure is a concern and will be a discussion topic.

Mr MacKenzie said that an item in the New Mexico Executive Order relating to conflict with existing state statutes could render the order largely symbolic rather than making effective change. Ms Mamola stated that when she had discussions with the New Mexico board they had said there was a degree of confusion about the actual impact the order will have, but indicated that it did highlight what challenges could be on the horizon.

e. Items related to National Council of Examiners for Engineering & Surveying (NCEES)

Ms Mamola said that vice chair Ms Purcell and herself would be attending the NCEES Board Presidents Assembly to be held February 8 and 9, 2019 in Atlanta, GA.

14. Discussion and possible action on board committee reports. (For possible action)

a. Administrative Procedures Oversight Committee, Chair Karen Purcell

Ms Purcell said that an APOC meeting had not been held since the last meeting of the board, and there was nothing to report.

Mr DeSart said, relating to the discussions during the audit report about assigned or committed reserves, would APOC be the proper place to make recommendations to the board for both assigned and specifically committed funds. Mr LaRiviere said it would likely be the best forum for discussion. Ms Mamola agreed and said deferred expense items along with those listed in the business plan would need to have firmer amounts plus contingencies assigned and be presented to APOC.

Mr DeSart said that it had been briefly discussed about whether the earmarked deferred expense reserves could be put into MMA or CDs until being needed. Ms Mamola said she needed clarification from the

Governor's Finance Office about the committed or assigned funds as it relates to our reserves, and they can be held in the type accounts mentioned.

Ms Mamola gave an update on the lease for the new Reno office, and said that the formal lease document has been confirmed as on the agenda for the Board of Examiners December meeting. She added that if approved, the process for the TIs could begin after the holiday break.

Ms Mamola said that the AV equipment was scheduled for installation at the Las Vegas office space and that recommendations on improving the acoustics in the conference room have been received. Ms Mamola said ideally we would like the work complete by the January meeting.

b. Legislative Committee, Chair Michael Kidd

i. Proposed changes to Nevada Administrative Code 625.545, professional liability insurance disclosure

Ms Purcell said that the Legislative Committee met on October 23, 2018 to discuss the proposed changes to NAC 625.545 which is the professional liability insurance disclosure. In summary it was decided and voted upon unanimously that language of the proposed changes to NAC 625.545 remain as written and that the board issue an opinion of the intent regarding the limits of coverage provided by the policy of insurance.

Mr Wright said it was brought up at the hearing the question of what is the available insurance. He said that in the committee's discussion, it was talked about and decided that a lot of contracts allow you to submit an insurance certificate, and that certificate doesn't list the available insurance it just shows your insurance limits. Mr Wright said that the committee believed that that was really the intent when interpreting the law.

Mr DeSart said he wanted to put something else out there and that he had talked to an attorney that represents his insurance company. The attorney, from Massachusetts, said in his state lawyers have a requirement to disclose to their board whether or not they have equivalent professional liability insurance. The way it works in that state is that they disclose whether or not they have it and not the limits. On the lawyers' board website there is a check box by every licensee or licensed lawyer on whether you have it or you don't have it. So the public has an opportunity to go on the website and do research to find out whether or not they are hiring a lawyer that has insurance or doesn't have insurance. Mr DeSart said to him that doesn't address the limits of coverage issue but he thought that was a more palatable approach for the business community rather than having to disclose it in contracts. He added that if we had laws that also required the check mark to be current and to report it if the licensee discontinued the coverage. Mr DeSart said it alleviates the other concern of the public and possibly signing a contract stating a licensee has insurance and then two days later they drop it. He added if there is a law that requires reporting whether or not you have insurance, and within 30 days of discontinuing insurance the professional would have to report to the board, and that the board kept track of it. Then the public can go on there on any given day to see if someone actually has insurance or not. That is just an alternative as to what we have been discussing and it is completely different from what was written into what we have as our proposed regulation changes but I like the idea and I would just like to put it out there for consideration.

Mr Wright said that we discussed this before and that most of the general public, especially less sophisticated, are the most vulnerable and are automatically assuming that professionals are all insured anyway. He

questioned how effective it would be for the public, saying obviously they can go to the website but how many are going to know they can and actually think to do it. Mr Wright added, first, engineers are required to have a contract and second, engineers are required to disclose whether or not they have insurance. That would be a better protection to the public without burdening the responsible engineers.

Mr LaRiviere asked Mr MacKenzie what the next step in the process would be. Mr MacKenzie replied that another separate rule making hearing like we had for the previous three, where anyone can show up and make public comments on the regulation. He continued to say that if the board wanted to make amendments then it will have to go back to LCB. Mr MacKenzie said an amendment could result in having to do SBI surveys and the workshops again just because the substance could change and the public might have a different view.

Ms Mamola said she would poll board members for possible hearing dates and times, and that they could participate via teleconference.

Ms Purcell said that another item we discussed at the committee meeting was other possible changes to NAC 625. Ms Mamola said if board members had identified any regulations in need of amending that they forward them along. She added if the number of amendments identified became sizeable, there may need to be some consideration given to a full repeal and replacement process. Ms Mamola said although that may seem a daunting task, it may actually be the more efficient process.

Ms Purcell said logistics and strategy for moving forward with the potential changes to NRS 625 NRS 329 were discussed. Ms Mamola added that we are working with board counsel and our board lobbyist to identify who is going to carry those NRS changes for us and who will be the BDR sponsor in the legislative session.

c. Professional Association Liaison (PAL) Council, Chair Greg DeSart

Mr DeSart reported that the PAL Council had met earlier in the morning and had representation from NALS, APWA, ACEC, and ASCE. He said that the NAC changes adopted were reviewed, general board activities were discussed, and plans outlined for a Northern Nevada ReConnect PDH event next fall for 2019.

Mr DeSart said the action items were the possibility of doing panel discussions at APWA conference in spring in Southern Nevada and fall for Northern Nevada about electronic signatures and electronic stamping. He added there is a tentative plan to have a board meet & greet sometime in January associated with our next board meeting in the South, with invites to agencies that are concerned with electronic stamping. Mr DeSart state that it would be in prelude of the panel discussions that will be held at APWA.

d. Public Outreach Committee, Chair Greg DeSart

Mr DeSart said that committee reviewed the ReConnect event in depth, and there was unanimous consensus that we want to do the Northern Nevada version next fall. He added staff will put together some ideas and report back to the committee.

Ms Larkin-Thomason asked for demographics on attendees, including years of experience as professionals.

Mr DeSart said another important item was the meet & greet at the Nevada Legislature on February 15, 2019 in Carson City from 8am to noon. He added that Ms Mamola was producing a collateral piece with key facts about the board and our position on issues related to the board.

Mr Spata asked who should attend. Ms Mamola replied any board member who is able available and would like to attend.

Mr DeSart said lastly, outreach to Nevada universities was discussed. It was decided that Ms Purcell and Ms Mamola would connect and try set a meeting with UNR in the north, and that Mr Anderson and himself would do the same with UNLV in the south.

15. Discussion and possible action on corporate name requests. (For possible action)

Ms Mamola said there were none at the time when the board packet was distributed and none has come in since.

16. Discussion and possible action on licensing of military members and military spouses. Consider expedited licensure process, reduced or waived application fees, and/or other considerations that could reduce impacts or challenges faced by military families related to licensure. (For possible action)

Ms Mamola said Mr Kidd had requested this item to be put on the agenda, but unfortunately he is not here today. She referenced an article in the board packet written by the Secretary of the Air Force, relating to complaints from active services members and their spouses about difficulty in obtaining professional licensure once they have moved to a new state. Ms Mamola also highlighted that the CA board has an expedited licensure program for military and military spouses. She stated that Mr Kidd had asked the board to consider expedited licensure process, reduced or waived application fee, and or any other considerations that reduce the impact or challenges faced by military and military spouses related to professional licensure.

Ms Mamola said that as a board we are already expediting the overall comity process and that staff currently identify if any comity applicant is active military or a military spouse for a faster track. She added that the expediting element is already in place. Ms Mamola asked if the board would consider a reduction in application fees. Mr LaRiviere asked what Ms Mamola's initial consideration would be for military/military spouse application fees. Ms Mamola replied a reduction to \$100 would be a starting point.

Mr Wright said that he would like to put forward that the board consider removing the application fee for active military members. Mr DeSart agreed.

18-77 A motion was made by Mr DeSart, seconded by Mr Wright to waive Nevada licensure application fees for active military and active military spouses.
The motion passed unanimously.

Mr LaRiviere said it would be important to get information out to members of the active military who may be considering licensure in Nevada and let them know about the expedited processing and zero local application fees.

17. Consideration of applicant requests to waive certain requirements of NRS/NAC Chapter 625 for license. (For possible action)

Waiver of Four or More Years Experience in Engineering – NRS 625.183.3

Ms Purcell recommended denying the waiver request by Michael Levine, applying for licensure as an electrical engineer.

Mr Anderson recommended denying the waiver request by Joseph Podegracz, applying for licensure as a civil engineer.

Waiver of Two Years Supervision Under a PE – NRS 625.183.4 (b)

Mr DeSart recommended the granting of the waiver request by Anthony Danko, applying for licensure as an environmental engineer.

Mr Anderson recommended granting the waiver request by Austin Martin, applying for licensure as a civil engineer.

Waiver of Two Years Active Experience – NRS 625.183.4 (a); Waiver of FE Exam – NRS 625.193.2

Ms Purcell recommended granting the waiver requests by Mehrdad Majidi, applying for licensure as an electrical engineer.

Waiver of Reference From the Same Company – NRS 625.210.1

Ms Purcell recommended the granting of the waiver request by Crystal Jenkins, applying for licensure as a civil engineer.

Ms Mamola asked for clarification with regard to Mr Levine’s and Mr Podegracz’s waiver denial. Ms Purcell said two more years of engineering experience would be required. Mr Anderson said the application could be resubmitted time with a more detailed description of his experience including time frames.

18-78 A motion was made by Ms Larkin-Thomason, seconded by Mr Anderson to approve the aforementioned as stated and noted. The motion passed unanimously.

18. Board approval of non-appearance applications for initial licensure. Refer to Addendum A for list of applicants. (For possible action)

The board considered 22 non-appearance applications for initial licensure and recommendations were made.

18-79 A motion was made by Ms Purcell, seconded by Mr Spata to approve the recommendations as noted in Appendix A. The motion passed unanimously.

19. Discussion and possible action on status of board and staff assignments. (For possible action)

Ms Mamola reviewed the status of action items. There were no questions or discussion.

20. Discussion and possible action on meeting dates. (For possible action)

Ms Mamola said that the January 17, 2019 meeting would begin at 12pm and that the PAL Council meeting would be at 10am that same morning.

Mr DeSart asked that the board consider the July or September 2019 meeting be held in rural Nevada, in either Elko or Ely, with his preference being Elko in September. Ms Mamola said she would review options and report back to the board.

21. Discussion and identification of topics for future meetings including possible proposed amendments to the Nevada Professional Engineers and Land Surveyors Law, NRS/NAC Chapter 625.

Mr LaRiviere asked that if board member had any topics for consideration that they forward them to Ms Mamola.

22. Signing certificates of licensure

The board members signed wall certificates for those persons granted initial licensure and licensure by comity.

23. Public comment

There was no public comment

Adjournment

Chairman LaRiviere adjourned the meeting at 11.54 am, on Thursday, November 8, 2018.

Respectfully,

Patty Mamola, PE
Executive Director

MIKE PAVLAKIS
KAREN A. PETERSON
JAMES R. CAVILIA
CHRIS MACKENZIE
DAWN ELLERBROCK
RYAN D. RUSSELL
JOEL W. LOCKE
JUSTIN TOWNSEND
S. JORDAN WALSH
KYLE A. WINTER
WILL WAGNER



ALLISON · MACKENZIE

GEORGE V. ALLISON
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MIKE SOUMBENIOTIS
(1932-1997)

December 22, 2016

Secretary of State's Office
Elections Division
101 North Carson Street, Suite 3
Carson City, NV 89701

RE: Nevada State Board of Professional Engineers and Land Surveyors amended Rules of Practice, as required by NRS 233B.050(1)(d).

Madame Secretary:

Our firm represents the Nevada State Board of Professional Engineers and Land Surveyors. Pursuant to NRS 233B.050(1)(d), this letter is intended to be an official statement of the changes and amendments made to the Board's Rule of Practice since they were last filed with the Secretary of State's Office. The revisions are as follows:

- The insertion of a liaison board member to assist in initial complaint review and recommendation to the Board as a whole, as well as proposed terms for a Stipulated Agreement with a complaint respondent.
- Clarification of Board counsel's participation in the Stipulated Agreement process has been added, as well as the Boards review of a proposed Stipulated Agreement.
- A timeframe for respondent to submit a list of witnesses and exhibits has been incorporated into policy.
- Board counsel's role and responsibility with regard to formal hearings before the Board is clarified.
- Established that the Board liaison shall be recused from a formal hearing.

Furthermore, an updated version of the Rules of Practice are attached hereto. Should you have any questions, please do not hesitate to contact me.

Sincerely,

ALLISON MacKENZIE, LTD.

By:


CHRIS MacKENZIE, ESQ.

CM/ww
Encl. Cc: Patty Mamola, Executive Director

**NEVADA STATE BOARD OF
PROFESSIONAL ENGINEERS
AND
LAND SURVEYORS**

RULES OF PRACTICE

RULES OF PRACTICE

In accordance with NRS 2338.050, the Nevada State Board of Professional Engineers and Land Surveyors (the "Board") adopts the following rules of practice.

PROCEDURES FOR HANDLING COMPLAINTS AGAINST LICENSEES

I. Initial Complaint:

a. Upon the receipt of a complaint against a licensee, applicant or third party, a determination shall be made by the compliance officer following consultation with the executive director, if necessary, as to whether the complaint sets forth adequate grounds for the imposition of discipline by the Board (See NRS 625.410).

b. In conjunction with the review of the complaint, the compliance officer may forward the Board's complaint form to the complainant and request the complainant to more fully set forth the nature of the complaint, the identity of the complainant and the identity of the person against whom the complaint is made (the "respondent"). A copy of the complaint form currently used by the Board is attached as Exhibit "1" to these Rules of Practice and Procedure.

c. When the Board receives the completed complaint form, the compliance officer shall forward a copy of the complaint to the respondent and request a detailed written response to the complaint. The respondent is required to respond to the compliance officer's request within thirty (30) days (See NRS 625.410(9)).

d. Upon receipt of the respondent's response to the complaint, the compliance officer, with the assistance of the executive director or the Board's legal counsel, if necessary, shall make an initial determination as to whether it is probable that a violation of the statutes, regulations or rules governing the practice of professional

engineering or land surveying in the State of Nevada has occurred.

e. The compliance officer shall make a recommendation to the executive director concerning the manner in which the complaint should be handled (dismissal, stipulated agreement with the respondent, referral to an advisory committee or a formal disciplinary hearing). (See NAC 625.640).

f. The executive director of the Board and a Board member ("Board Liaison") assigned to the matter by the Board Chairperson shall consider the recommendation made by the compliance officer and, if necessary, discuss the matter with the Board's legal counsel.

g. The Executive Director and the Board Liaison will decide whether to: dismiss the action; offer the Respondent a Stipulated Agreement; refer the matter to an advisory committee; go forward with a formal disciplinary complaint; or request that additional information be provided (See NRS 2338 and NAC 625.640).

(1) If the matter is dismissed, the complainant and the respondent shall be advised in writing that the complaint has been dismissed, and the Executive Director shall report the dismissal at the next regularly scheduled meeting of the Board.

(2) If the Executive Director believes that the matter may be best resolved by a stipulated agreement, the Executive Director and Board Liaison shall propose terms for a Stipulation, which Board Counsel shall incorporate into a Stipulated Agreement and forward to respondent for consideration.. If the respondent accepts the proposed stipulation, the signed Stipulated Agreement shall be submitted to the Board for consideration at its next meeting. The Stipulated Agreement shall not be effective unless and until approved by the Board, and should the Respondent decline to accept the proposed Stipulated Agreement, the Executive Director shall have the discretion to submit the matter

to the Board for formal hearing at the next Board meeting where time permits. A form stipulated agreement is attached as Exhibit "2".

(3) If the Executive Director and Board Liaison decide to have the matter heard by an advisory committee, the compliance officer shall follow the procedures necessary to establish an advisory committee and shall set a time and place for the committee to review the matter (See NAC 625.646).

(4) If the Executive Director and Board Liaison decide to go forward with a formal disciplinary complaint, the Board shall set a hearing date and direct the Board's legal counsel to prepare a formal disciplinary complaint.

h. The Board, acting through its Chairman or its executive director, may issue subpoenas requiring the attendance of an individual or the production of requested documents (See NRS 625.440).

II. Formal Disciplinary Complaint:

a. The Board's legal counsel shall prepare a formal disciplinary complaint setting forth the specifics of the complaint and the rules, statutes or regulations which the respondent has allegedly violated. A form disciplinary complaint is attached as Exhibit "3". The Board's legal counsel shall prepare the notice of the hearing on the formal disciplinary complaint. A form notice of hearing is attached as Exhibit "4".

Board counsel shall forward by certified mail, return receipt requested, the formal complaint and notice of the hearing to the respondent together with a letter advising the respondent of his rights and obligations, as well as the requirement for respondent to provide a list of witnesses and exhibits to board counsel at least ten (10) calendar days before the hearing. A form letter to the respondent is attached as Exhibit "5".

b. The respondent may request a continuance of the scheduled hearing.

Generally, the Executive Director will grant one continuance of a scheduled disciplinary hearing. All other requests for continuances will be denied unless the respondent can demonstrate clear and convincing grounds for the granting of a second continuance.

c. Prior to the hearing, the Executive Director shall discuss with the Board Liaison and Board's legal counsel the parameters within which the disciplinary complaint may be settled. The Board's legal counsel shall discuss possible settlement of the disciplinary action with the respondent. If it appears that the complaint can be resolved by stipulated agreement, the Board's legal counsel shall draft a proposed stipulation to resolve the formal disciplinary complaint. A form Stipulation and Decision of the Board is attached as Exhibit "6".

d. The proposed Stipulation shall be submitted to the Board at its next meeting. The Stipulation is not effective unless and until the Stipulation is approved by the Board at a public meeting.

e. Board counsel shall attempt to enter into a stipulation of proposed list of exhibits with respondent/respondent's counsel.

III. Procedures Governing a Formal Disciplinary Hearing:

a. The respondent is entitled to be represented by an attorney licensed in the State of Nevada. (See NAC 625.635)

b. The Chairman of the disciplinary hearing shall request all Board members to advise whether they have a conflict which requires them to recuse themselves from participating in the hearing.

c. The Board Liaison in a matter shall recuse him or herself from participating in the hearing.

d. The Board's legal counsel shall mark and place into evidence all

exhibits which support the allegations contained in the complaint. The respondent may state his objections, if any, to the exhibits and may submit additional exhibits which are relevant to the charges set forth in the complaint or to the defenses raised in the respondent's answer to the complaint.

e. The Board's legal counsel and the respondent may make a short opening statement. Thereafter, the Board's legal counsel shall call witnesses to testify concerning the allegations contained in the complaint. The respondent may cross-examine the witnesses and may call witnesses to testify on his behalf.

f. The Chairman of the Board, or a Board member designated by the Chairman, shall chair the disciplinary hearing. The Chairman of the disciplinary hearing shall make all rulings concerning the admission of evidence. The Chairman of the disciplinary hearing may accept into evidence those exhibits that have been marked and offered by either the Board's legal counsel or the respondent.

g. Formal rules of evidence do not apply. (See NRS 2338.123)

h. After the evidence, exhibits and testimony have been submitted, the respondent may make a closing argument. The Board's legal counsel does not make a closing argument and does not make any recommendation to the Board concerning the manner in which the disciplinary complaint should be resolved, but it may clarify to the Board the various counts asserted against the respondent.

i. After the evidence has been submitted and the respondent has finished his closing statement, the Chairman of the disciplinary hearing summarizes the issues to be decided by the Board. The alleged violations must be proved by substantial evidence.

j. Any Board member may make a motion concerning the decision to be made by the Board. The motion must be seconded and adopted by a majority vote of the

Board members participating in the hearing to be effective.

k. After the Board has orally advised the respondent of its decision, the Board's legal counsel shall draft a formal Decision and Order and submit the draft to the executive director. A form Decision and Order is attached as Exhibit "7". The executive director may make appropriate revisions and forward the revised Decision and Order to the Chairman of the disciplinary hearing for signature.

l. The signed Decision and Order shall be served by certified mail on the respondent, return receipt requested.

m. The respondent has 30 days following receipt of the written decision to seek judicial review. (See NRS 2338. 130).

COMPLAINT FORM



COMPLAINT FORM

1755 E Plumb Lane, Suite 135

Reno, NV 89502

(775) 688-1231

board@boe.state.nv.us

(775) 688 2991 fax

COMPLAINANT INFORMATION (person filing the complaint):

| | | |
|----------|---------------|-------|
| Engineer | Land Surveyor | Other |
|----------|---------------|-------|

| |
|-------|
| Name: |
|-------|

| |
|----------------|
| Business name: |
|----------------|

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|----------|
| Address: |
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| City: |
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| State: |
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| Zip: |
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| Phone: |
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| Email: |
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Contents of this page are **CONFIDENTIAL** (not public information)

Anyone can file a complaint (consumers, building officials and other design professionals). Complaints may allege unethical conduct, incompetence, misconduct, unlicensed practice or other actions. All complaints that fall within the board's jurisdiction, regardless of the source or allegation, will be investigated.

If the person about whom you have complained harasses you, notify the Board immediately.

RESPONDENT INFORMATION (person complaint is against):

| | | |
|----------|---------------|-------|
| Engineer | Land Surveyor | Other |
|----------|---------------|-------|

Name:

Business name:

Address:

City:

State:

Zip:

Phone:

Email:

Notes for filing a comprehensive complaint:

- What transpired?
- Who is involved (names, addresses, phone numbers)?
- What City or County is the project located in?
- Have you spoken to any agencies?
- Provide dates and details to outline the status of the services provided
- Include copies of all plans, calculations, specifications, plats, maps, contracts
- If there is no written contract, write down the details of the agreement

Please be as complete and specific as possible
(attach additional sheets if necessary)

COMPLAINT NARRATIVE (details of the complaint):

I declare, that the information contained in this complaint (and the attached pages) is true and correct to the best of my knowledge and belief

Signature: _____

Date: _____

typed name accepted as signature

STIPULATED AGREEMENT

COMPLAINT

BEFORE THE STATE OF NEVADA

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

IN THE MATTER OF

JOHN DOE,

A PROFESSIONAL ENGINEER

COMPLAINT

LICENSE NUMBER _____

COMPLAINT NUMBER _____
_____ /

Complainant, _____, Executive Director of the State of Nevada Board of Professional Engineers and Land Surveyors ("State Board"), does hereby complain against JOHN DOE, and respectfully requests that he be disciplined and avers as grounds therefor the following:

I.

JOHN DOE is licensed as a professional land surveyor in the State of Nevada, having license number _____ in the discipline of professional land surveying.

II.

On or about month/day, 20____, the State Board received a complaint against Mr. DOE from, _____ (individual that filed Complaint Form). The complaint alleges that Mr. DOE (list of violations)

III.

The Compliance Officer of the State Board notified Mr. DOE of the complaint received and requested Mr. DOE to provide a written response to the allegations contained therein.

IV.

Mr. DOE's provided a written response to the Complaint to the Board, dated month/day, 20____. A copy of Ms. DOE's response is attached hereto as Exhibit "B".

V.

NRS 625.410 provides in relevant part as follows:

The Board may take disciplinary action against a licensee, an applicant for licensure, an intern or an applicant for certification as an intern for:

2. Any gross negligence, incompetency or misconduct in the practice of professional engineering as a professional engineer or in the practice of land surveying as a professional land surveyor.

...

4. Conviction of or entry of a plea of nolo contendere to any crime an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.

VI.

NAC 625.530 provides, in relevant part, as follows:

In a professional engineer's or land surveyor's relations with his or her employers and clients, he or she shall:

1. Act in professional matters as a faithful agent or trustee for each employer or client.

...

5. While employed, not engage in supplementary employment or consulting practice except with the consent of the employer.

...

VII.

Mr. DOE's conduct also constitutes gross negligence, incompetence and/or misconduct in the practice of professional engineering in violation of NRS 625.410(2).

VIII.

Mr. DOE's violations of NRS 625.410, and NAC 625.530 are sufficient grounds for the imposition of discipline of his registration as a professional land surveyor in the State of Nevada under NRS 625.410(5), which provides as follows:

The Board may take disciplinary action against any licensee...for:

...

5. A violation of the provisions of this chapter or regulation adopted by the Board.

XII.

Mr. DOE has not been previously disciplined by the State Board, which may be considered by the State Board as a mitigating factor in the imposition of discipline.

WHEREFORE, Complainant respectfully request that a hearing be had, and upon such hearing, that the Nevada State Board of Professional Engineers and Land Surveyors enter an order imposing one or more of the following penalties:

1. Revocation or suspension of Mr. DOE's license as a professional land surveyor in the State of Nevada being license number _____;
2. Placement of Mr. DOE on probation;
3. Imposition of an administrative fine in an amount not to exceed \$_____ for each violation of Chapters 625 of the Nevada Revised Statutes and Nevada Administrative Code and/or any regulation adopted by the Board;
5. Other disciplinary action; and
6. Directing Mr. DOE to reimburse the State Board for all costs and fees incurred in the investigation of this matter and prosecution of this disciplinary action.

DATED this _____ day of _____, 20_____.

State of Nevada Board of Professional Engineers and Land Surveyors

By: _____, Executive Director

VERIFICATION

I, _____, (Executive Director) under penalty of perjury, declare that the following assertions are true:

That I am the EXECUTIVE DIRECTOR of the STATE OF NEVADA BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS, the Complainant in the above-entitled action; that I have read the foregoing Complaint and know the contents thereof; that the same are true and correct to the best of my knowledge, save and except those matters therein stated on information and belief and as to those matters I believe them to be true.

DATED this _____ day of _____, 20_____.

State of Nevada Board of Professional
Engineers and Land Surveyors

By: _____
_____, Executive Director

NOTICE OF HEARING

BEFORE THE STATE OF NEVADA
BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

IN THE MATTER OF

JOHN DOE

A PROFESSIONAL ENGINEER

NOTICE OF HEARING

LICENSE NUMBER _____

COMPLAINT NUMBER _____

_____ /

TO: JOHN DOE
Address
City, State Zip

NOTICE IS HEREBY GIVEN, pursuant to Nevada Revised Statute 625.430, that the State of Nevada Board of Professional Engineers and Land Surveyors ("State Board") will hold a hearing on the attached Complaint against JOHN DOE, requesting that the State Board to determine whether he be suspended, fined, placed on probation and/or otherwise disciplined, or that the Board impose any other penalty provided by law which the Board may deem appropriate. The hearing will be held at the Nevada State Board of Professional Engineers and Land Surveyors, 1755 E. Plumb Lane, Suite 135, Reno, Nevada, on month/day, 20____, commencing at ____:____ a.m.

YOU HAVE THE RIGHT to be represented by counsel and to request the Board to subpoena witnesses to testify at the hearing.

DATED this _____ day of _____, 20____.

By _____
Attorney for Nevada State Board of
Professional Engineers and Land Surveyors

DATE

Via Certified Mail, U.S. Mail & Email

John Doe
Address
City, State Zip

Re: Notice of Hearing and Formal Complaint for Complaint Number _____

Dear Mr. Doe:

Our firm serves as counsel for the Nevada State Board of Professional Engineers and Land Surveyors ("Board"). At its last meeting, the Board was provided with notice of a complaint filed against you in relation to your actions _____.

Enclosed, please find copies of the following:

1. Notice of the Hearing on Complaint Number _____ filed with the Board. The hearing is scheduled to be held on month/day, 20____, commencing at TIME a.m. at the State Board's office, located at 1755 E. Plumb Lane, Suite 135, Reno, Nevada; and
2. The disciplinary Complaint filed against you, Mr. Doe, by the Executive Director of the State Board.

If there are witnesses who would provide relevant information, but who are unwilling to voluntarily testify at the hearing, the Board will subpoena those witnesses if you timely request the Board to do so.

The Board requires that all exhibits proposed to be submitted at the hearing, as well as the list of witnesses that may testify at the hearing, be forwarded to me at least ten (10) calendar days of the hearing. I will be forwarding you all documentation I plan to present at the hearing.

Please confirm in writing that you will attend the hearing scheduled to be held on month/day, 20____ at _____:____ a.m. and whether you will be represented by counsel in this matter.

Sincerely,

Attorney for Nevada State Board of
Professional Engineers and Land Surveyors

Encl.
cc: Executive Director

DECISION AND ORDER

BEFORE THE STATE OF NEVADA
BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

IN THE MATTER OF
JOHN DOE
A PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER _____
COMPLAINT NUMBER _____

DECISION AND ORDER

_____ /
The above matter came on regularly for hearing before the State of Nevada Board of Professional Engineers and Land Surveyors (the "State Board") on month/day, 20____, in Reno, Nevada. JOHN DOE ("Mr. DOE") was present and represented by _____ of the law firm of _____. Attorney for the State of Nevada Board of Professional Engineers and Land Surveyors, presented the matter to the State Board, on behalf of the Executive Director of the State Board. Witnesses having been sworn, testimony heard, and evidence having been introduced, the matter was submitted to the State Board for decision, and the State Board, after due consideration, did find and decide as follows:

1. JOHN DOE ("Mr. DOE") is licensed as a professional land surveyor in the State of Nevada, having license number _____. Mr. DOE was an employee of _____.

2. In his complaint to the State Board, _____ (individual that filed the Complaint Form), indicated that (violations)

_____.

3. Uncontested evidence, in the form of both testimony and stipulated exhibits, was received by the State Board at the hearing on this matter regarding the Project. At the hearing before the State Board, the exhibits revealed that Mr. Doe: (Violations)

4. On or about month/day, 20____, the Executive Director of the State Board filed a formal disciplinary complaint (“Formal Complaint”) against JOHN DOE alleging that Mr. DOE had committed gross negligence, incompetence and/or misconduct in the practice of professional engineering as a professional engineer, in violation of NRS 625.410.

5. In addition, the Formal Complaint alleged Mr. DOE violated NAC 625.530 (1) and (5), both for failing to act in a professional matter as a faithful agent of an employer or client, and engaging in supplementary employment without the consent of his employer.

6. Further, the Formal Complaint alleged that Mr. DOE violated NRS 625.410 (4) by entering a plea of nolo contendere to the crime of petit larceny, of which an essential element is dishonesty.

7. The State Board finds that the above evidence constitutes a violation of NRS 625.410 (2), which reads in relevant part, as follows:

The Board may take disciplinary action against a licensee...for:

...

2. Any gross negligence, incompetency or misconduct in the practice of professional engineering as a professional engineer or in the practice of land surveying as a professional land surveyor.

8. The State Board finds that JOHN DOE's entry of a plea of nolo contendere of the crime of petit larceny, under the above circumstances, constitutes a violation of NRS 625.410 (4) which reads in relevant part:

The Board may take disciplinary action against a licensee...for:

...

4. Conviction of or entry of a plea of nolo contendere to any crime an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.

9. Further, the State Board finds that JOHN DOE's conduct, as described above, is in violation of both NAC 625.530 (1) and (5), which read in relevant part:

In a professional engineer's or land surveyor's relations with his or her employers and clients, he or she shall:

1. Act in professional matters as a faithful agent or trustee for each employer or client.

...

5. While employed, not engage in supplementary employment or consulting practice except with the consent of the employer.

...

10. Pursuant to NRS 625.410, the State Board finds that the imposition of discipline is appropriate.

THEREFORE, ON MOTION DULY MADE, SECONDED AND ADOPTED, THE STATE BOARD ORDERED THAT:

1. JOHN DOE's license to practice land surveying in the State of Nevada, License Number _____, is suspended for a period of two (2) years, commencing month/day, 20__ and ending month/day 20__.

2. JOHN DOE's license suspension shall be stayed and Mr. DOE shall be placed on probation, Mr. DOE shall provide monthly written reports to the Board outlining the nature and

scope of all land surveying work performed by him or under his supervision during the term of his probation.

3. The stay on the suspension of Mr. DOE's license shall be lifted should he not satisfy all of the terms set forth herein.

4. JOHN DOE shall reimburse the State Board for investigative costs incurred in this matter in the amount of _____ DOLLARS (\$ _____) within thirty (30) days from the date of this Decision and Order.

5. JOHN DOE shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee, within six (6) months of the date of this Decision and Order.

6. The imposition of this Decision and Order does not limit the powers of the State Board from imposing discipline upon Mr. DOE on matters independent of this action and/or not yet presented to the State Board.

DATED this _____ day of _____, 20____.

STATE OF NEVADA BOARD OF
PROFESSIONAL ENGINEERS AND
LAND SURVEYORS

By: _____
_____, Chairman

DATE

Via Certified Mail, U.S. Mail & Email

John Doe
Address
City, State Zip

Re: Decision and Order for Complaint Number _____

Dear Mr. Doe:

Enclosed is a copy of the State of Nevada Board of Professional Engineers and Land Surveyors' Decision and Order dated _____. You have thirty (30) days from your receipt of this Decision and Order within which to seek judicial review on the matter.

If you need additional time to pay the assessed investigative fees, please submit a request for an extension of time to the Executive Director. Any requests for an extension of time should set forth a suggested payment plan and justification for request.

Please call me if you have any questions concerning the Board's Decision and Order.

Sincerely,

Attorney for Nevada State Board of
Professional Engineers and Land Surveyors

Encl.

Cc: Executive Director
Compliance Officer