

INVESTIGATIVE COMPLAINTS AND FINDINGS

*As of May 19, 2015

- (1) A licensed Utah Engineer, living in another State, was sanctioned in the State of Oregon for violating the rules of conduct regarding engineering of significant structures and practicing engineering without a license by the State of Oregon and sanctioned by the State of Colorado for the violation in Oregon.
 - The investigation substantiated the allegations and a letter of concern was sent in order to address Division concerns, allegations upon which those concerns are based, and the potential for administrative or judicial action should the conduct continue in the State of Utah.
- (2) Allegation of an individual who indicated on an application stating he is the "Consulting Engineer". The investigation found the individual is not licensed in the State of Utah as a Professional Engineer and a citation was issued.
 - Further investigation found this incident is an exemption under Utah Law. The citation was dismissed.
- (3) An individual and his neighbor were engaged in a property boundary dispute regarding a cinderblock wall that resulted in a small claims case. The individual prepared and submitted an affidavit as evidence in the small claims case. The submitted affidavit, describes the work performed by the individual to establish a property boundary.
 - A citation was issued and affirmed by the presiding Hearing Officer.
- (4) Allegation of a licensed Engineer doing Surveying work. Investigation found the Engineer was acting as a Surveyor by drawing in easements and writing legal descriptions.
 - A citation was issued and affirmed by the presiding Hearing Officer.
- (5) Allegation of a Surveyor that did not place markers on the ground for a survey. Investigation found the survey was done for a different client other than the complainant and markers were placed on the ground.
 - The investigation was closed due to insufficient evidence.
- (6) A licensed land surveyor in the State of Utah conducted an incompetent/negligent land survey. The investigation substantiated that there had been a problem with the survey.
 - The conduct was addressed and corrected, and the individual surrendered his Professional Land Surveyor license.
- (7) The Division received a complaint that an individual was using the abbreviation/initials "PE" on his email correspondence, and engaging in the practice of engineering in the State of Utah when not licensed to do so. The investigation determined that the individual is in fact a licensed PE in the State of Arizona and has the word "(Arizona)" after PE, on his emails. A citation was issued to the individual for using the initials "PE" and engaging in the practice of engineering in the State of Utah. The individual denied the citation and requested a hearing. The hearing officer did not uphold the citation and indicated as long as the individual was showing he was licensed in Arizona and not doing work in Utah, there is no violation.
 - The citation was dismissed.
- (8) A licensed Utah Land Surveyor was performing deficient surveying on water rights issues. The parties involved were unwilling to participate or provide the investigation with the necessary documents to substantiate the allegations.
 - This case was closed due to the lack of evidence.
- (9) Allegation of an Engineer submitting deficient plans and negligent conduct in his practice. The investigation found the codes used on plans submitted to a building official were outdated and newer codes should have been used. However, it is still unknown if the newer code changes had currently been adopted by the State of Utah.
 - A verbal warning was issued.

58-1-502. Unlawful and unprofessional conduct -- Penalties.

(1) Unless otherwise specified in this title, a person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.

(2) (a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:

(i) issue a citation to the person according to this section and any pertinent rules;

....

(i) The division may not issue a citation under this section after the expiration of six months following the occurrence of a violation.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

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March 10, 2015

Mr. Mark B. Steinagel,
Director, Division of Professional Licensing
Heber M. Wells Building
160 East 300 South
P.O. Box 146741
Salt Lake City, UT 84114-6741

Dear Mr. Steinagel:

This letter is to hopefully encourage some review of the requirement for Professional Development Hours (PDHs) to renew licenses for Professional Engineers and Land Surveyors here in the State of Utah. This review should consider the goal and application of these requirements.

As a former Chair of the Utah Council of Land Surveyors and one who has been practicing in the land surveying profession in both government and private sector business for over 50 years, I believe that the one size fits all requirement could be modified and still meet the intended goal of having a qualified professional workforce of land surveyors in this State.

I have been involved with and been in the leadership of professional surveying societies at both the state and national levels since 1974. Previously I was a member of the Standards and Ethics committee here in Utah and helped rewrite the Utah State exam for licensing of land surveyors just a few years back. As an owner of a land surveying company, I employed up to 4 professional land surveyors and one professional engineer in conducting a diversified operation.

Over the years I have watched states increase the personal requirements to apply for state licensure in the fields of engineering and land surveying. The requirements have increased incrementally both in terms of levels of education required and the amount of specific course work related to these fields of labor. The length of time necessary in both sub professional and professional employment has also increased.

One of the driving forces for the continuing education requirement was to bring the journeyman and professional community together in recognizing common needs and standards to better serve the public and protect the image of the professions. This need was recognized before instituting a continuing education requirement by a few of the more well known and dedicated surveyors in the State and the impetus for organizing the Utah Council of Professional Surveyors.

There are several basic areas in which the surveyor and/or engineer can work. Surveyors may specialize in one or several of the generally mentioned areas which include property boundary surveys, construction surveys, reconnaissance and mapping surveys, restoration and subdivision of

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the public land survey system and other geodetic or control surveys. Within the engineering field there are also many areas in which they may focus their knowledge and skills.

We have found by experience that serious errors are generally followed by a complaint either by the public or another professional colleague who has uncovered either shoddy work or poorly researched records which did not produce the information necessary to make a sound or procedurally correct decision and which resulted in an erroneous product. This sometimes happens when a surveyor or engineer ventures out of his area of expertise and does not consult with knowledgeable colleagues or because time constraints or other factors are not deemed worth the effort. In either of these scenarios the professional is putting his reputation and that of the profession on the line. These situations can usually be classed as unethical conduct in that the result is not professionally sound.

When those in the profession were found not complying with technical or ethical requirements, it was deemed that more education, especially in those areas where complaints were being filed, would resolve the problems. However, education seldom resolves the problem for those who are lacking in ethical motivation or who simply take the least path of resistance to finish a project. It might be more appropriate and effective to add a fine and suspension to those found guilty of malfeasance or unethical conduct rather than probation and additional education.

In my experience I have seen surveyors put on probation who should have been given a much more meaningful penalty for the work they did or for that which they should have done but failed to do. Serving the public is a privilege with which comes a responsibility to provide professional and reliable products. It would be beneficial for the public if the engineering or land surveying societies were included in the loop on recommending actions according to the severity of the impact of the complaint. DOPL employees strive to be fair and equitable but sometimes lack the experience to understand complete impacts of the complaint. Conversing with one or two licensed people in the field does not necessarily uncover the larger area affected by actions identified in the complaint.

Attending surveying/engineering conferences on an annual basis provides sufficient continuing education credits to meet the current requirement for professional development hours or PDHs. I believe that the most beneficial part of the conferences is the networking among attendees who discuss problems and solutions to real everyday situations and which are not necessarily included in material presented by those who have "canned" materials which are intended to give the broad brush coverage to the profession.

My increasing belief is that after a number of years in the profession there is a diminishing return on the investment in continuing education in a formal sense. My personal experience suggests that the current requirements are fine for those who are young in education and experience perhaps less than twenty years. After that I feel that the requirement could be decreased to no more than half of that requirement if the professional has no blemishes on his record. There are ample

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continuing education courses in various fields on line to help those who need specific help in other areas in which the surveyor may desire to work.

In summary, I would hope you and your staff will re-consider the requirements for continuing education in regard to license renewal and disciplinary actions for the protection and service necessary to the public.

Most respectfully,

Francis D. Eickbush, PLS

cc: Scott Woolsey, State Chair of the Utah Council of Land Surveyors

Notes from NCEES Western Zone meeting, May 15-16, 2015

Structural Engineering Licensure:

ACCA Committee explored the nature of structural engineering and the trends / needs in licensure. They recognized that there are five possible models for structural engineering licensure:

1. Generic PE (everyone, including structural engineers, practice within their areas of competence).
2. Generic PE plus protected SE title
3. Generic PE plus protected SE title with practice restrictions on significant structures
 - 3a. PE plus SE
 - 3b. SE only
4. Discipline-specific licensure; parse out the different specialties
5. Separate SE license, regulated separately from PE.

The committee recommends that option 3 be placed in the Model Rules, and has presented a motion to that effect. This will require a vote from us at the annual meeting.

They propose the definition of "significant structures" be left to the individual states. There are variations on this definition and NCSEA apparently couldn't tie down a definition of seven "significant structures". Some states tie the definition to "essential facilities" as defined by the building code.

Professional Surveying Exam

NCEES will start offering the PS Exam as a computer based exam in October 2016. Paper exams will no longer be offered after April 2016.

The national PS exam will not include any state-specific exams, i.e. NCEES will no longer provide proctoring for State specific exams. They recognize the problem with this approach, and are exploring options. The Utah exam is currently offered in a CBT format, we are the model of what many other states are trying to accomplish. NCEES is trying to facilitate proctoring of state specific survey exams by other state boards (no need to travel to another state to take an exam)

There seems to be no interest in decoupling the PS Exam from the requirement for experience, as some states have done with the engineering exam.

FE and FS CBT exam windows:

Currently the FE and FS exams are offered in windows (on for two months, off for one) to allow NCEES to evaluate results. NCEES has decided that the "off" month is not needed, and will offer the exams in all months (April and December are great times to take exams.) The Exams will still be offered in windows, and a person can only take the exam once per window.

Policy Statement 35 on Education Required for Initial Licensure

Based on direction from a motion at last year's annual meeting, offered by the Oklahoma Board, the ACCA Committee has prepared a new policy statement which includes the text which was previously found in the Model Law relative to the "Model Law Engineer 2020" and "Model Law Structural Engineer 2020". In essence, this language recognizes that engineering is becoming more complex and undergraduate engineering education no longer has room to accommodate the needed knowledge. As they were directed ACCA stayed with the exact language previously used in the Model Law. This will require a vote from us at the annual meeting.

Foreign Affiliate Membership in NCEES

The ACCA Committee put forth a resolution that NCEES establish an affiliate, non-voting membership class for international organizations that offer the NCEES licensure exams in places outside of the US. This will require a vote from us at the annual meeting.

Nominations Committee

The ACCA Committee recommends that the nominations committee only serves as a tellers committee, that it no longer needs to be formally constituted, and that it be disbanded. This will require a vote from us at the annual meeting.

Continuing Professional Competency (CPC) Consistency

The Committee on Education is trying to find some common threads in the CPC requirements among the states, with the intent of updating the model rules (240.30) to reflect the most common practice. Renewal cycles vary greatly. Thirty-one jurisdictions require 15 hours annually, eight require 12, two require between one and eleven, and nine require none. The Committee is proposing the Model Rules to require 15 pdh per year, based on a calendar year, with one ethics hour per year. They make no recommendation about the carry-over of credits to subsequent years, because they found no consistent practice on this. This will require a vote from us at the annual meeting.

Young Professionals Committee

NCEES has established a committee to explore the attitudes of young professionals and use that input to guide the future of NCEES. The committee will consist of 12 individuals, including students, engineering and surveying interns, and young professionals just licensed. Our own Scott Bishop has been selected to Chair this committee.

Election of National Treasurer

There is a contested election for NCEES Treasurer, and we will need to cast a vote at the annual meeting. One candidate is the incumbent in this position, having served for two years: Gary Thompson, PLS is from the North Carolina Board in the Southern Zone. The other candidate is Shelly Macey, PE, from the Wyoming State Board of our Western Zone.

Continuing Professional Competency (CPC) Registry

The Committee on Education is developing a CPC Registry, to facilitate the tracking of CPC credits by individual engineers and surveyors. This is in response to the varied approach taken by the states relative to CPC, in terms of number, calendar, and quality. This system will be available by mid-2016, and open to all engineers and surveyors without cost.

Professional Engineering Exam

The Committee with jurisdiction over the PE Exam (EPE) has been looking at ways to make the exam more practice related. In their opinion, adding practice-related questions, like contract law, insurance, regulations, financial management, etc.) would require that they remove technical questions, and they are not interested in making that change. They are considering offering a separate practice-issues exam, and will be surveying state boards about potential interest in this option.

NCEES is working towards CBT for the PE Exam but will not be migrating in the next 2-3 years.

Issues from Nearby States

Idaho is exploring providing comity for engineers licensed in Canada and the UK. They consider the requirements in those countries to be substantially equivalent.

New Mexico is struggling with licensure for those with foreign degrees. They require a minimum of 2 years of US-based experience. They are getting pressured by applicants educated in foreign countries who have already been licensed in other US jurisdictions and are asking for comity; even though other states have licensed them, the NM Board finds their educational background insufficient.

2016 Western Zone Meeting

Next year's Western Zone meeting will be held on May 19-21 in Anchorage.

The 2017 Western Zone meeting will be in Denver, combined with the Central Zone.