

BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS
MINUTES – April 26, 2016

MEMBERS PRESENT:

David Titcomb, Chair
Michael Sackett, Vice-Chair
James Nadeau
Elwood Ellis, Complaint Officer
Dierdra Perry

STAFF PRESENT:

Karen Bivins, Administrator
Robert Perkins, Assistant Attorney General
Kim Baker, Office Specialist I
Cathy Pendergast, Education Coordinator

MEMBERS ABSENT:

Roderick Craib

CALL TO ORDER

The meeting was called to order at 8:37 a.m. by Chairman David Titcomb.

AGENDA MODIFICATIONS

OLD BUSINESS

Action on Minutes of January 19, 2016 Meeting

A motion was made by Perry to approve the minutes of the January 19, 2016 meeting; seconded by Sackett. Unanimous.

NEW BUSINESS

Adjudicatory Hearing John H. Mathieson 2015-LSU-11626, 11697 and 2016-LSU-12033

The hearing was opened at 9:20 a.m. by Hearing Officer Rebekah Smith. Mathieson was not present, and was not represented by an attorney. Assistant Attorney General Robert Perkins represented the State in this matter.

Public deliberations were conducted at the close of the hearing.

A motion was made by Nadeau and seconded by Perry, to find a violation of Count I: 10 M.R.S. § 8003(5-A)(A)(9) “*noncompliance with an order ... of any office, board or commission*” by failing to pay a \$1,000.00 fine imposed in a Decision and Order issued by the Board in Case 2013-LSU-9163, dated October 28, 2014 on or before April 28, 2015. Motion carried unanimously.

A motion was made by Titcomb and seconded by Nadeau, to find a violation of Count II: 10 M.R.S. § 8003(5-A)(A)(9) “*noncompliance with an order ... of any office, board or commission*” by failing to pay a \$1,500.00 fine imposed in a Decision and Order issued by the Board in Case 2015-LSU-10850, dated August 6, 2015 on or before February 6, 2016. Motion carried unanimously.

A motion was made by Sackett and seconded by Perry, to find a violation of Count III: 10 M.R.S. § 8003(5-A)(A)(7) “*continuing to act in a capacity requiring a license under the governing law of an office, board or commission ... suspension ... of that license*” during time period your license was suspended from September 1, 2015 through November 30, 2015 by:

- (1) continuing to refer to himself as a licensee and offer his land surveying services on the website for “J H Mathieson Surveying”;

- (2) offering to continue to provide land surveying services to Martha Rice and referring to yourself in your communications with Martha Rice as a “PLS” with your license number.

Motion carried unanimously.

A motion was made by Perry and seconded by Nadeau, to find a violation of Count IV: 10 M.R.S. § 8003(5-A)(A)(7) “*continuing to act in a capacity requiring a license under the governing law of an office, board or commission ... after expiration ... of that license*” by continuing to refer to himself as a licensee and offer his land surveying services on the website for “J H Mathieson Surveying” after the expiration of your license on December 31, 2015. Motion carried unanimously.

A motion was made by Sackett and seconded by Perry, to find a violation of Count V: 10 M.R.S. § 8003(5-A)(A)(8) “*aiding or abetting unlicensed practice by a person who is not licensed as required by the governing law of an office, board or commission*” by working on a survey for Ronald and Millie Edwards prepared and drawn by Allen L. Mathieson on September 5, 2015 and checked by you on that date, at which time Allen L. Mathieson was a licensed surveyor in training and your license was under suspension making you ineligible to be the professional land surveyor in responsible charge of survey work being done by Allen L. Mathieson. Motion carried unanimously.

A motion was made by Nadeau and seconded by Sackett, to find a violation of Count VI: 10 M.R.S. § 8003(5-A)(A)(1) “*the practice of fraud, deceit or misrepresentation ... in connection with services rendered by engaged in the occupation or profession for which the person is licensed*” by communicating with Martha Rice during the period of your suspension while holding out as a professional land surveyor with your license number and promising to perform a pre-existing surveying engagement without telling Ms. Rice that your license was under suspension and you would not be able to recommence the project until after December 1, 2015. Motion carried unanimously.

A motion was made by Perry and seconded by Nadeau, to find a violation of Count VII: 10 M.R.S. § 8003(5-A)(A)(2) “*the gross negligence, incompetence, misconduct ...*” by agreeing to perform services for Martha Rice in June 2015 including, but not limited to, verifying the corner points of her property and the hide (sic) tide 75 foot set back line for which you received an \$800 check that was cashed on July 17, 2015 and you did not perform the work in a timely manner or communicate with Ms. Rice concerning the project in a timely manner or tell her that your license would be under suspension from September 1, 2015 through November 30, 2015. Motion carried unanimously.

A motion was made by Titcomb and seconded by Perry, to find a violation of Count VIII: 10 M.R.S. § 8003(5-A)(A)(2) “*any ... violation of an applicable code of ethics ... while engaged in the occupation or profession for which the person is licensed*” by violating Board Rules, Chapter 90, Part II, § 3 “*WRITTEN CONFIRMATION*” by failing to provide Martha Rice with a written confirmation concerning the land surveying work you were agreeing to undertake for her relating to her property in Cushing, Maine in June and July 2015. Motion carried unanimously.

A motion was made by Nadeau and seconded by Sackett, to find a violation of Count IX: 10 M.R.S. § 8003-G (2)(B) *failing to report a criminal conviction with in ten (10) days*” by failing to report your Operating under the Influence conviction in Rockland District Court Docket #201500101 within ten days of May 1, 2015. Motion carried unanimously.

A motion was made by Perry and seconded by Sackett, to find a violation of Count X: 10 M.R.S. § 8003-G (2)(B) *failing to report a criminal conviction with in ten (10) days*” by failing to report your Violation of a

Protective Order conviction in Rockland District Court Docket #20120039 within ten days of November 1, 2012. Motion carried unanimously.

A motion was made by Nadeau and seconded by Perry, to find a violation of Count XI: 10 M.R.S. § 8003(5-A)(1) *“the practice of fraud, deceit or misrepresentation ... in connection with obtaining a license from a board* by failing to disclose your Violation of a Protective Order conviction in Rockland District Court Docket #20120039 in connection with your license renewal application made on January 8, 2014 when you answered “no” to the question “Since your last renewal, have you been convicted of a crime?”. Motion carried unanimously.

A motion was made by Titcomb and seconded by Nadeau, to reaffirm the finding of the violation in Count V after the hearing officer provided definitions. Motion carried unanimously.

A motion was made by Nadeau and seconded by Titcomb, to reaffirm the finding of the violation in Count VI was pursuant to “deceit” and “misrepresentation”. Motion carried unanimously.

A motion was made by Titcomb and seconded by Perry, to reaffirm the finding of the violation in Count XI was pursuant to “fraud”, “deceit” and “misrepresentation”. Motion carried unanimously.

A motion was made by Perry and seconded by Nadeau, to reaffirm the finding of the violation in Count VII was pursuant to “misconduct”. Motion carried unanimously.

A motion was made by Titcomb and seconded by Nadeau, to deny the renewal application. Motion carried unanimously.

A motion was made by Titcomb and seconded by Perry, to impose a fine of \$1500 per Count for a total of \$16500.00. The motion was amended by Titcomb and seconded by Perry to require the fine to be paid within six months. Motion carried unanimously.

A motion was made by Nadeau and seconded by Perry to include language in the Decision and Order to protect the public should licensee re-apply for licensure in the future. The licensee should provide proof of ability to perform professionally as a licensed land surveyor in accordance with Board regulations. Motion carried unanimously.

A motion was made by Titcomb and seconded by Perry, to impose a reprimand for Counts I through XI. Motion carried unanimously.

A motion was made by Perry and seconded by Nadeau to authorize the Chair to sign the Decision and Order prior to the next Board meeting. Motion carried unanimously.

Administrator's Report

The administrator updated the Board about the final outcome of the OPEGA review. After considering the Commissioner’s response to OPEGA’s request for her to review cases from the past 5 years, OPEGA voted not to pursue the inquiry further.

The Board discussed the upcoming conversion of NCEES Professional Land Surveyor Exam (PS) to computer based testing (CBT) and the subsequent affect to the administration of the Maine Specific Exam. Due to this change in administration of the PS Exam, NCEES will no longer administer state specific exams and thus leaves the Board in the position of again administering its own state specific exam. Rather than return to a paper and pencil exam administered by Board staff, the preferred method of future administrations of the Maine Specific Exam would be some kind of electronically

administered exam either through the Department's current on-line system, or another independent exam administrator such as PearsonVue. The administrator will investigate the cost to develop an electronic format of the exam with either option. The Board also decided that since it has been quite some time since the exam question pool has been reviewed, that this would be a good time to review the pool and move forward with an updated exam question pool.

Applications

The Board reviewed the application report provided by staff.

CE Audit 2015

Board staff conducted a 5% audit for the renewal period ending 12/31/2015. Of the 25 licensees audited, only 2 were found to be in non-compliance with 32 MRS §18225 and Board Rule Chapter 70.

A motion was made by Titcomb and seconded by Sackett to send a letter of guidance to the licensee in case number 2016-LSU-12240 to remind him that continuing education must be completed prior to renewing the license. The letter of guidance is to remain in licensee file for one year. Unanimous.

A motion was made by Titcomb and seconded by Nadeau to offer a consent agreement to the licensee in case number 2016-LSU-12239 instructing him to complete the outstanding 1.75 hours of continuing education and pay a \$200.00 fine by June 15, 2016. Unanimous.

Travel Requests

A motion was made by Titcomb and seconded by Perry to send Ellis and Nadeau to the 2016 NCEES Annual Meeting in Indianapolis, IN August 24-27, 2016. Unanimous.

Next Scheduled Meeting Date

Tuesday, June 21, 2016

ADJOURN

Being no further business, the meeting adjourned at 12:17 p.m.

Respectfully submitted,
Kim Baker, Office Specialist I