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BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: DAVID E. MOORE

C2015-06

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Board-initiated Complaint seeking disciplinary action against David E. Moore (hereinafter "Respondent"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. This Complaint, initiated by the Board on January 21, 2015, involved an engineering design for a private residence ("the design") which was included in an invitation for bids dated January 2, 2013.
3. The Board alleged violations for failure to sign or seal the design and further alleged that the design did not meet generally accepted engineering standards.
4. Respondent held a professional engineering license and Certificate of Authorization in West Virginia at the time of the design, both of which lapsed upon Respondent's relocation to the state of Colorado, and therefore the Respondent did not renew his license or COA in West Virginia.
5. Respondent requested and received a more definite statement regarding the Board allegation that the design did not meet generally accepted engineering standards and, through retained counsel, thereafter filed a Response to the Board-initiated Complaint.

6. In the response, Respondent took the position that the design was a preliminary drawing.
7. After reviewing the Response, which included additional information of Respondent's work in connection with the design, the Board agreed to not pursue the allegation regarding the adequacy of the design but proceed solely on the violation related to Respondent's failure to sign or seal the design.
8. The Board finds the design was a drawing presented to a client with no disclaimer and with the seeming intent that it be used by Respondent's client to invite bids based on the design, submitting only technical questions to Respondent.
9. The Board makes no finding regarding whether the design met generally accepted engineering standards.
10. The Board has taken into account the following factors in reaching this settlement: Respondent, through counsel, cooperated in the prompt resolution of this Complaint; the Respondent's lack of prior discipline with the Board, and the fact that the failure to sign or seal the design did not pose any risk of harm to the public given that the design was not ultimately utilized by the client in that the design was not built.
11. The Board, in its discretion, will not assess administrative costs although it has incurred such costs in the investigation, initiation and resolution of this Complaint and it is within the Board's power to assess such costs.

CONCLUSIONS OF LAW

12. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 et seq.
13. A registrant's seal is used to identify his or her professional work. West Virginia Code § 30-13-16(c).

14. A registrant's seal and signature shall appear on the first or title page of all final and/or record documents presented to a client or any public or governmental agency to certify that the work was done by a registrant or under the control of a registrant. West Virginia Code R. § 7-1-7.3(a).
15. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." W. Va. Code § 30-13-21(b); *see also* W. Va. Code § 30-13-21(d)(4) and West Virginia Code R. § 7-1-15.
16. Failure to affix a seal and signature on a final drawing presented to a client in violation of West Virginia Code R. § 7-1-7.3(a) is a form of misuse of seal and also constitutes a general violation of applicable statutes and rules, both of which allow civil penalties of up to \$5,000.00. West Virginia Code R. § 7-1-15.1.
17. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
18. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d) (4) and W. Va. Code R. § 7-1-14.4.

CONSENT OF RESPONDENT

David E. Moore, by affixing his signature hereon, agrees to the following:

19. Respondent is represented by counsel and is aware of his right to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and Respondent intelligently and voluntarily waives

these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

20. Respondent admits that he did not sign and seal the design which was presented to his client, which the Board has found to be a final design or drawing, in violation of West Virginia engineering law.
21. Respondent elects not to contest the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
22. Respondent acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2015-06. This paragraph is binding upon Respondent even in the event that the Board does not approve this Consent Order.
23. Respondent acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent's activities in West Virginia in consideration of this Consent Order.
24. Should the Board not approve this Consent Order, Respondent waives any objections to the Board or any of its members participating in the adjudication of this matter based on the Board's rejection of this Consent Order. This paragraph is binding on the Respondent even if the Board does not approve this Consent Order.
25. Respondent acknowledges that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
26. Respondent understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an

action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent which may be before this Board.

27. Respondent understands that the Complaint, documents submitted to the Board by Respondent, and this Consent Order, together with other public documents which may be in the file, are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
28. Respondent agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
29. Respondent acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondent by the Board, and the addition of any other charges which may arise or ensue from Respondent's non-compliance with this Consent Order.
30. Respondent acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondent by the Board, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2015-06 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for violating the provision requiring that all final documents presented to a client be signed and sealed, which amount must be paid within thirty (30) days of the date of entry set forth below, made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.
3. The Board agrees to waive the imposition of any and all Administrative Costs.
4. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. If the civil penalty of Two Hundred Fifty Dollars (\$250.00) is not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein, together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

7. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
8. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent which may come before this Board.
9. Except as to any action by the West Virginia Board of Registration for Professional Engineers, this Consent Order does not constitute an admission against interest by Respondent in connection with any claim or element of any claim which may be asserted by any person or entity in any civil action against Respondent, and this Consent Order may not be admitted in such civil action except as *prima facie* evidence that disciplinary action was taken against Respondent by the Board because the design was presented to a client without a seal or a disclaimer indicating it was not a final design.
10. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:



DAVID E. MOORE

5-27-15
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 11th day of June, 2015.

**WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

By: 

**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**

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