RECEIVED

NOV 0 9 2023

WV PE BOARD

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: HEATH A. DUMACK **C2024-11**

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Garth E. Thomas, Jr., P.E., its President, for the purpose of agreeing to resolve the Board-initiated Complaint against Heath A. Dumack ("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. Respondent is a licensed professional engineer in West Virginia, and in other states. His West Virginia Certificate of Registration (a.k.a. "P.E. License") number is No. 14353.
3. On or about December 23, 2020, Respondent utilized the Board's online renewal application portal to renew his P.E. License for the licensure period of January 1, 2021 to December 31, 2022.
4. In his application for renewal for the years 2021 and 2022, Respondent answered "No" to the question ("Question") "Since the date of your last WV PE renewal (or if this is your first WV PE renewal, since the date of your initial PE application) have you been subject to any disciplinary action or any investigation by any local, state or national regulatory board (including those in WV), or have you been convicted of a felony or a misdemeanor (excluding minor traffic violations)?"

5. As a result of his input to the online, renewal application, Respondent's P.E. License was renewed for the licensure period of January 1, 2021 to December 31, 2022.

6. In July 2023, the Board became aware of the disciplinary action by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors ("Kentucky PE Board") against Respondent in its action numbered, File #17049. This Kentucky PE Board action was resolved through its *Consent Decree* dated January 11, 2019.

7. This resulted in a Board-initiated investigation, which was the basis of this Board's Complaint which set forth the allegations that Respondent had been disciplined by the Kentucky PE Board, and that by answering "No" to the aforesaid Question, Respondent had, or attempted to, perpetrate fraud and deceit in renewing his Certificate of Registration, and had provided false testimony or information to the Board.

8. The Board initiated Complaint Number C2024-11 at its regular meeting on September 26, 2023, which was received and filed by the Board on said date.

9. Prior to the thirty-day Response deadline, the Board and Respondent agreed to settle this matter by the entry of a Consent Order in lieu of Respondent filing a formal response to the Complaint, and waiving his right to an administrative hearing, and his right to appeal.

10. By agreement of the parties, the Board dismisses the allegation that Respondent had, or attempted to, perpetrate fraud and deceit in renewing his Certificate of Registration, in return for Respondent's admission that he had provided false testimony or information to the Board by failing to disclose the Kentucky PE Board disciplinary action on his P.E. License renewal application.

11. The Board has considered the following factors in reaching this settlement: there was no risk of harm to the public; the violation did not pose any harm to the public; and Respondent cooperated in the resolution of this Complaint.

12. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs and administrative costs were incurred in the investigation, initiation and resolution of the original and amended complaint.

CONCLUSIONS OF LAW

13. 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*.

14. Heath A. Dumack, Respondent, has the power and authority to make admissions and otherwise act on his own behalf.

15. It is unlawful for any person to provide false testimony or information to the Board, in violation of the provisions of West Virginia engineering law. W. Va. Code §30-13-21(a)(12).

16. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code § 30-13-21(a)(4).

17. 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 W. Va. Code R. § 7-1-15.

18. Providing misinformation to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars ($15,000.00). W. Va. Code R. § 7-1-15.1.

19. 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.

20. 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

Heath A. Dumack, Respondent, by affixing his signature hereon, agrees to the following:

21. Respondent acknowledges his right to consult an attorney of his choosing, at his sole expense, and he knowingly, freely, voluntarily, and without any threat of harm or act of coercion waives his right to proceed with counsel, and will proceed pro se. Further, Respondent is aware of his rights to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and Respondent knowingly, freely and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

22. Respondent admits that he had been disciplined by the Kentucky PE Board by *Consent Decree* dated January 11, 2019.

23. Respondent further admits that his December 23, 2020 answer of "No," to the aforesaid online, renewal application Question was false, and that this answer constituted the act of providing misinformation to the Board.

24. Based on the findings of fact set forth above, the legal citations set forth herein, and Respondent's admissions above, the Board **FINDS** that Respondent violated W. Va. Code §30-13-21(a)(12) when he answered "No" to the Question.

25. Respondent accepts the findings set forth above and consents to the entry of this Consent Order knowingly, freely and voluntarily, and not under duress, restraint or compulsion.

26. 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.

27. 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. This paragraph is binding on Respondent even if the Board does not approve this Consent Order.

28. 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.

29. If the Board does reject this proposal, any admissions made herein by Respondent are deemed null and void.

30. 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.

31. Respondent understands that the Complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.

32. 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).

33. 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, non-renewal or non-reinstatement of any certificate of registration 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.

34. 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, non-renewal or non-reinstatement of any certificate of registration 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 C2024-11 pursuant to West Virginia Code §30-13-22(b).

2. The Board **ORDERS** Respondent to pay a civil penalty of Five Hundred Dollars ($500.00) for providing misinformation to the Board in Respondent's renewal application for his 2021-2022 P.E. License.

3. The civil penalty imposed herein totaling Five Hundred Dollars ($500.00) must be paid within thirty (30) days of the date of entry set forth below, such amount to be made payable to the "**W. Va. P.E. Board**" for transfer to the general fund of the State of West Virginia upon receipt.

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 rescission of this Consent Order, reinstatement of the Complaint, the summary revocation of the license issued to Respondent by the Board, and further disciplinary action by the Board.

6. If the civil penalty imposed herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent's P.E. License is hereby **ORDERED REVOKED**. Said revoked license may be restored once the civil penalty is paid, and Respondent pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code §30-13-21(d)(1).

7. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, 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 of Five Hundred Dollars ($500.00), together with pre-judgment interest from the date of the Board 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.

8. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein.

9. 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. 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.

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:

HEATH A. DUMACK **DATE** 11/7/23

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 15th day of November, 2023.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: Garth E. Thomas

GARTH E. THOMAS, JR., P.E.
BOARD PRESIDENT