

BEFORE THE STATE OF MARYLAND BOARD FOR PROFESSIONAL ENGINEERS

**BOARD FOR PROFESSIONAL
ENGINEERS**

v.

THOMAS WILLIAM MCNEILAN,
Respondent

Agency Case No.: 05-PE-20

* * * * *

SETTLEMENT AGREEMENT AND CONSENT ORDER

This matter comes before the Maryland Board for Professional Engineers (“Board”) as the result of the Board conducting a random audit of Thomas William McNeilan’s (“Respondent”) license renewal application to determine if the Respondent met the Board’s license renewal professional development hour (“PDH”) requirements. As a result of the random audit and subsequent investigation, the Board initiated a Complaint. To resolve that Complaint, the Board and the Respondent (collectively “Parties”) have agreed to enter into this Settlement Agreement and Consent Order (“Consent Order”), and agree and stipulate as follows:

1. At all times relevant to the Complaint, the Board had jurisdiction over the Respondent, who holds a license issued by the Board to practice engineering (“license”) under number 05-35674, and the subject matter of this Complaint.
2. The Maryland Professional Engineers Act (“Act”), codified at Business Occupations and Professions Article (“Bus. Occ. & Prof.”), Annotated Code of Maryland §§ 14-101 to 602, provides at Bus. Occ. & Prof. § 14-314(f) that “[t]he Board shall adopt regulations to require a demonstration of continuing professional competency for a licensee as a condition of renewal of a license...”
3. The Board adopted and promulgated such regulations at Code of Maryland Regulations (“COMAR”) 09.23.01 to .06, and COMAR 09.23.06.03 sets forth specific requirements as follows:

.03 Requirements

A. A licensee shall complete a minimum of 16 PDH units earned from the participation in and completion of qualifying programs described in Regulation .04 of this chapter as a condition of license renewal in each individual biennial licensing term.

B. A minimum of 1 PDH unit in each individual biennial licensing term shall be earned from the participation in and the completion of qualifying programs with content areas related to the following:

- (1) The awareness of ethical concerns and conflicts related to the practice of engineering;

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(2) An enhanced familiarity with the code of conduct for professional engineers;

(3) An understanding of standards of practice or care related to the practice of engineering; or

(4) Laws and regulations applicable to the practice of engineering in Maryland.

C. A maximum of 8 PDH units earned in excess of 16 units that are required for a license renewal during the licensing term can be carried forward to apply as credit toward the next individual licensing term.

4. The Respondent's license's original expiration date was October 16, 2018, and on or about September 24, 2018, the Respondent applied for license renewal. When submitting the application, the Respondent certified having completed the required PDHs as of the application date. The Board approved the renewal based upon that certification.
5. When the Respondent submitted the license renewal application, the Board initiated a random audit to confirm that the Respondent had completed the PDH requirements. The Board then requested that the Respondent provide documentation for the PDHs that the Respondent had certified completing.
6. The Respondent provided no documentation for any PDHs in response to the audit.
7. The Respondent agrees and acknowledges that the Respondent violated the Board's PDH requirements by certifying completion without having completed the required PDHs.
8. Pursuant to Bus. Occ. & Prof. § 14-317(a)(1)(vi), subject to the hearing provisions of § 14-319, the Board may reprimand a licensee, suspend a license, or revoke a license if "the applicant or licensee violates any regulation adopted by the Board..." Pursuant to Bus. Occ. & Prof. § 14-317(a)(2)(i) "[i]nstead of or in addition to reprimanding a licensee or suspending or revoking a license under this subsection, the Board may impose a penalty not exceeding \$ 5,000 for each violation."
9. To resolve this matter, the Respondent hereby admits to a finding, and consents to the Board entering a reflective Order, that the Respondent violated COMAR 09.23.06.03(A) by failing to meet the PDH requirements for the license term ending on September 24, 2018, and requiring that the Respondent:
 - a. Shall immediately upon executing this Consent Order pay a civil monetary penalty made payable to the "Maryland Board for Professional Engineers" in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) by certified check, cashier's check, or money order; and
 - b. Shall within thirty (30) days of executing this Consent Order complete sixteen (16) acceptable PDHs, to include one (1) PDH in the area of professional ethics as required

by COMAR 09.23.06.03, and shall agree to not use or attempt to use any of those PDHs for any future license renewal; and

- c. Shall within forty-five (45) days of executing this Consent Order provide documentation to the Board, that the Board deems satisfactory, showing that the Respondent completed the PDHs as provided in the above paragraph.
10. The Respondent agrees that if the Respondent fails to comply with the terms of this Consent Order, the Respondent's license will immediately and automatically be suspended without a hearing on the suspension, and that the suspension will continue until the Board determines that the Respondent has evidenced compliance with the Consent Order's terms.
11. The Respondent acknowledges and agrees that this Consent Order shall constitute a Final Order of the Board and shall be enforceable as such.
12. By entering this Consent Order the Respondent, in relation to this matter, expressly waives the right to have charges reduced to writing, to an administrative hearing before the Board or its designee on any charges, to the making of Findings of Fact and Conclusions of Law, to any and all other proceedings before the Board or its designee on this matter, and to any rights to appeal from this Consent Order to any court of competent jurisdiction.
13. The Respondent acknowledges and agrees that the Respondent is entering this Consent Order freely, voluntarily, and after having had the opportunity to seek advice of counsel.
14. The Parties acknowledge and agree that this Consent Order will serve as the final resolution of Complaint No. 05-PE-20, serve as the Final Order in this matter, be a part of the Respondent's record that is maintained by the Board, and that the Board's records and publications will reflect the terms of the Consent Order.

BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS 14th DAY OF November, 2019, BY THE STATE BOARD FOR PROFESSIONAL ENGINEERS HEREBY:

- I. **ORDERED** that the Respondent violated that the Respondent violated COMAR 09.23.06.03(A); and it is further
- II. **ORDERED** that the Respondent shall immediately upon executing this Consent Order pay a civil monetary penalty made payable to the "Maryland Board for Professional Engineers" in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) by certified check, cashier's check, or money order; and it is further
- III. **ORDERED** that the Respondent shall, within thirty (30) days of executing this Consent Order, complete sixteen (16) acceptable PDHs, to include one (1) PDH in the area of professional ethics as required by COMAR 09.23.06.03, and shall agree to not use or attempt to use any of those PDHs for any future license renewal; and it is further

- IV. **ORDERED**, that the Respondent shall, within forty-five (45) days of executing this Consent Order provide documentation to the Board, that the Board deems satisfactory, showing that the Respondent completed the PDHs as provided in the above paragraph; and it is further
- V. **ORDERED** that if the Respondent fails to comply with the terms of this Consent Order, the Respondent's license will immediately and automatically be suspended without a hearing on the suspension, and that the suspension will continue until the Board determines that the Respondent has evidenced compliance with the Consent Order's terms; and it is further
- VI. **ORDERED** that unless otherwise specified in this Consent Order, each provision herein shall remain in effect and enforceable as herein agreed unless the Board in writing stays, modifies, terminates, or suspends it; and it is further
- VII. **ORDERED** that this document shall constitute a Final Order of the Board, and the Board may consider this Settlement Agreement and Consent Order and the facts set forth herein in connection with, and in deciding, any subsequent action or proceeding before the Board, and that this Settlement Agreement and Consent Order may, if relevant, be admitted into evidence in any matter before the Board, its designee, and/or any court; and it is further
- VIII. **ORDERED** that the Board's records and publications shall reflect that the Respondent and the Board resolved this matter through this Settlement Agreement and Consent Order.

AGREED: 

Signatures on File