

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

RECEIVED

IN RE: ROBERT S. KRABILL

FEB 10 2012

C2012-01

**WV PE BOARD
CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "Board") Edward L. Robinson, P.E., its President, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action to be taken against Robert S. Krabill (hereinafter "Respondent"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of the above-referenced 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 the State of West Virginia holding license number 11026.
3. Respondent does business through his sole proprietorship, RSK Engineering, located in Morgantown, West Virginia, which holds Certificate of Authorization (COA) # C03004.
4. According to a complaint filed with the West Virginia Board of Architects, Respondent submitted a sealed set of architectural plans to the Morgantown

- Building Department for an addition to a fraternity house, which plans were in violation of the fire code and contained numerous other deficiencies.
5. The Complaint also alleged on information and belief that the plans were prepared by someone other than Respondent and sealed without the ~~requisite~~ proper review.
 6. On August 1, 2011, the West Virginia Board of Registration for Professional Engineers initiated Complaint C2012-01 alleging Respondent practiced engineering outside of his area of education or experience, including his practice of architecture, and misused his engineering seal, which complaint was filed and served on August 2, 2011.
 7. In his response of August 19, 2011, Respondent stated he had “performed this action a limited number of times (less than 10) and immediately discounted (sic) said activity upon notification of [the Board’s concern].”
 8. Later communication revealed that “this action” referred to architectural practices and standards which, as set forth in his response, Respondent “self-taught ... after being asked to review and approve plan sets that included architectural issues or aspects.”
 9. Respondent went on to explain in his response that this “work was done solely for established clients involving plans prepared by [a named individual].”
 10. The Board was told by Respondent that the [named individual] who prepared the plans had a degree in architecture but was not licensed to practice architecture in West Virginia. The Board is recording that assertion here for inclusion in the provision regarding consequences which may result from any misstatement or

misrepresentation made in connection with this matter, but does not consider it a mitigating factor in the violations admitted to herein.

11. The response went on to state that the work was limited to three (3) clients and involved plans submitted to the City of Morgantown for building permit purposes.
12. Upon further inquiry by the Board, Respondent stated that the three projects were an apartment building in 2006, a hotel in 2010, and the fraternity house that was the subject of the complaint filed with the Board of Architects that precipitated the complaint by this Board.
13. The Board finds that the fact that the work was done for “established clients” is irrelevant and provides no justification for a professional engineer to practice beyond the scope of his experience and expertise or to seal plans that do not conform to accepted engineering standards or that were not his work or under his control.
14. Similarly, the Board finds that no engineer should rely on governmental or other review or correction of submitted engineering work as a check on whether the plans conform to professional engineering standards, but rather should submit such plans only when the work is within the professional engineer’s experience and expertise and lawfully sealed.
15. Respondent admits that the sealed plans for the fraternity house contained several deficiencies that evidence that Respondent did not conform to accepted engineering standards and was practicing beyond his area of education, experience and expertise, both of which are violations of the Rules of Professional Responsibility.

16. Respondent admits that on three occasions he sealed plans, the work for which was performed by a third party and not completely checked by Respondent or prepared under his direct supervision and control and further admits that sealing these plans constitutes three counts of misuse of his professional engineering seal, which is also a violation of the Rules of Professional Responsibility.
17. The Board has made no inquiry and therefore makes no findings regarding whether the apartment building and hotel had deficiencies similar to those evidenced in the submitted plans for the fraternity house, but, based on Respondent's admissions regarding same, finds that Respondent's seal on these plans constituted misuse of seal.
18. Because the apartment building was sealed five years ago (in 2006), the Board, in its discretion, will not take this instance of misuse of seal into account in determining appropriate disciplinary action.
19. Respondent's prompt and candid response, in which he revealed other instances of conduct similar to that alleged in the Complaint, mitigates Respondent's culpability regarding the admitted violations of West Virginia Engineering Law, and the Board has taken these factors into consideration in determining the appropriate discipline to be agreed to herein and in its discretionary decision not to impose administrative costs.
20. While the Board always takes into consideration the circumstances leading to the violation and the interest of and risk of harm to the public as rendering decision regard all disciplinary actions, including the amount any civil penalty, the Board has specifically considered the following in this matter: the Board's interest in

requiring a civil penalty in an amount that will be a substantial economic deterrent to the violation; the considerable extent to which Respondent cooperated with the Board and the Board's investigation; and other appropriate matters, including Respondent's representation to the Board that paying the full civil penalties agreed to herein within thirty (30) days would cause him financial hardship.

CONCLUSIONS OF LAW

21. The Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering in the State of West Virginia.
22. The Board, in its discretion, is authorized to take disciplinary action against any person found to be in violation of West Virginia engineering law and may suspend or revoke or refuse to issue, restore or renew a license or impose a civil penalty upon any licensee who has been found to violate one or more provisions of West Virginia engineering law. W. Va. Code § 30-13-21(a).
23. Such disciplinary action may be taken against any licensee who has failed to comply with any rules of the Board, including the Rules of Professional Responsibility, which require that a professional engineer exercise the "privilege of performing engineering services only in the areas of their competence according to current standards of technical competence" and "shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering involved." W. Va. Code R 7-1-12.2(b) and 12.4(a).

24. Such disciplinary action may be taken against any licensee who has “[s]igned or affixed the professional engineer’s seal or permitted the professional engineer’s seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents or calculations or revisions which have not been prepared or completely checked by the professional engineer or under the professional engineer’s direct supervision or control.” W. Va. Code § 30-13-21(a)(10).
25. The Rules of Professional Responsibility also prohibit a professional engineer from affixing his signature or seal to any design documents that do not conform to accepted engineering standards or to any plans or documents except in accordance with West Virginia engineering law. W. Va. Code R 7-1-12.3(b) and 12.4(b).
26. The Board is authorized to assess civil penalties against any person who violates any provisions of this article or any rule promulgated by this 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).
27. Misuse of a West Virginia professional engineer seal, to which Respondent has admitted herein to two offenses, is an action that could subject Respondent to discipline by the Board, including a civil penalty up to \$5,000.00 for each offense. W. Va. Code R. § 7-1-15.1.
28. A violation of the Rules of Professional Responsibility is an action that could subject Respondent to discipline by the Board, including a civil penalty up to \$5,000.00 for each offense. W. Va. Code R. § 7-1-15.1.

29. The Board, in its discretion, may assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity who violates any provision of West Virginia engineering law, which costs shall be paid to the West Virginia State Board of Registration for Professional Engineers by check or money order within a period of thirty (30) days from the date of the order entered by the Board. W. Va. Code R § 7-1-14.4.

CONSENT OF RESPONDENT

Robert S. Krabill, individually, by affixing his signature hereon, agrees to the following:

30. Respondent is aware of his right to be represented by counsel and is aware of his option to pursue this matter through appropriate administrative and/or court procedures and Respondent intelligently and voluntarily waives his right to do so.
31. Respondent admits to two offenses of misuse of seal in connection with the architectural plans submitted for the fraternity house and the hotel.
32. Respondent admits he violated the following Rules of Professional Responsibility in connection with the fraternity house by: (1) performing engineering services outside his areas of competence which did not conform to current standards of technical competence; (2) sealing design documents which did not conform to accepted engineering standards; and (3) undertaking an assignment when he was not qualified by education or experience in the specific technical fields of engineering involved.
33. Respondent accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and without duress, restraint or compulsion.

34. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
35. 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 C2012-01. This paragraph is binding on Respondent even in the event that the Board does not approve this Consent Order.
36. This Consent Order is executed by Respondent for the purposes of avoiding further administrative action with respect to this Complaint. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning the Respondent prior to or in conjunction with consideration of this Consent Order.
37. Should the Consent Order not be accepted by the Board, it is agreed that presentation to and by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings and that any knowledge obtained by the Board shall not form the basis of any objection to any Board member serving on the hearing panel in the event this matter goes to hearing, any such objection being knowingly waived by Respondent. This paragraph is binding on Respondent even if the Board does not approve this Consent Order.
38. Respondent acknowledges that this Consent Order, the underlying Complaint and his response are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.

39. 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 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).
40. Upon acceptance by the Board, 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 action except an action by the Board to enforce the terms of this Consent Order.
41. 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 which may be 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.
42. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of Complaint C2012-01, the summary revocation of any license or certificate of authorization issued to the Respondent and Respondent's firm, 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.
43. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

ORDER

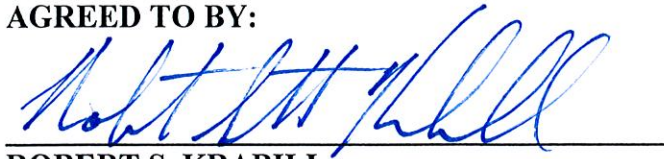
1. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay civil penalties in the amount of Five Hundred Dollars (\$500.00) for each of two offenses of Respondent's misuse of his West Virginia Professional Engineering seal, for a total of One Thousand Dollars (\$1,000.00).
3. The Board **ORDERS** Respondent to pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for his violations of the Rules of Professional Responsibility relating to sealing a document that did not conform to accepted engineering standards and undertaking an assignment outside his areas of education, experience and/or competence.
4. The civil penalties imposed herein in the total amount of Two Thousand Dollars must be paid within six months from the date of the Board's entry of this Consent Order evidenced by the date of the President's signature, such payments 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.
5. Such amount ~~shall~~ may be paid in installments of at least Five Hundred Dollars (\$500.00) per installment.
6. 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 website, as well

as other appropriate placements, including the non-public enforcement exchange database administered by NCEES.

7. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
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 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.
9. If the civil penalties imposed herein are 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 the payment agreed to herein of Two Thousand Dollars (\$2,000.00), 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.
10. 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.
11. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers 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.

[signature line appears next page]

AGREED TO BY:



ROBERT S. KRABILL

Respondent

2/7/12
DATE

ENTERED into the records of the West Virginia State Board of Registration for

Professional Engineers this 7th day of FEBRUARY, 20 12

WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS,

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

1/24/12
DATE