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

WV PE BOARD

IN RE: HAROLD P. MCCUTCHEON

C2019-26

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Bhajan S. Saluja, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Harold P. McCutcheon (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 this 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 WV P.E. License number is No. 13364.
3. On or about December 31, 2018, Respondent utilized the Board's online renewal application portal to renew his West Virginia P.E. license for the next renewal period of January 1, 2019 to December 31, 2020. Respondent's initial WV licensure was on 05/29/1997.
4. In his application for renewal, Respondent answered "No" to the question ("Question"), "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 misdemeanor or felony since your last WV PE renewal?"
5. As a result of his input of his responses to the on-line renewal application, Respondent's WV P.E. license was renewed for the period of January 1, 2019 to December 31, 2020.

6. Subsequent to Respondent's renewal of his WV P.E. license, the Board became aware of a Colorado State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors' (CSB's) disciplinary action against Respondent in Case No. 2017-442. This Colorado action was resolved through a Stipulation and Final Agency Order (Order) entered on April 17, 2017.
7. The resolution of the Colorado disciplinary action occurred since Respondent's previous renewal on January 3, 2017.
8. It was further learned that the CSB Order referenced a 2010 disciplinary action before the Ohio State Board of Registration for Professional Engineers and Surveyors (OSB) against Respondent in Case No. 2010-014. This Ohio action was resolved through a Settlement Agreement entered June 9, 2010.
9. As a result of discovering the OSB disciplinary action, it was determined that Respondent on his West Virginia 2010-2011 Annual Renewal Professional Engineer-WV application, dated June 30, 2010, answered "No," to the question, "Have you been subject to disciplinary action or any investigation by any local, state, or national regulatory board (including those in WV) or have you been convicted of a misdemeanor or felony since your last WV PE renewal?"
10. Prior to December 31, 2018, Respondent did not disclose the OSB disciplinary action on any of his previous PE renewals. However, the OSB disciplinary action was disclosed by the Firm on the its January 11, 2018 application for the renewal of its Certificate of Authorization (COA), January 1, 2018 – December 31, 2019, in that Respondent was listed as its WV Engineer in Responsible Charge. The Firm did not disclose the CSB disciplinary action on this COA renewal application.
11. The aforesaid acts 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 Ohio and Colorado State Boards, and by answering "No" to the aforesaid Questions, Respondent had, or attempted to, perpetrate fraud and deceit in renewing his P.E. license.

12. The Board initiated Complaint Number C2019-26 at its regular meeting on May 29, 2019, which was filed and served on June 3, 2019.
13. On July 9, 2019, Respondent's Response, dated July 3, 2019, was received by the Board. For purposes of this Consent Order, the Response will be deemed timely.
14. Respondent and the Board agreed to settle this matter, Respondent would forego his right to an administrative hearing and his right to appeal, and the Board will proceed against Respondent on the charge of providing misinformation to the Board.
15. By agreement of the parties, the violation alleged in the Complaint is reduced herein to one count of providing misinformation to the Board, and the Board finds no attempt to perpetrate fraud and deceit in renewing his P.E. license.
16. For purposes of this Consent Order, Respondent admits his answer of "No," to the aforesaid December 31, 2018 on-line, renewal application Question was a misrepresentation of the truth on Respondent's on-line renewal application for his WV P.E. license, and such act constitutes providing false or misinformation to the Board in order to renew his WV P.E. license, in violation of W.Va. Code §30-13-21(a)(12).
17. The Board has considered the following factors in reaching this settlement: there was no risk of harm to the public; the violations did not pose harm to the public; Respondent was in good standing with the Board prior to the initiation of this Complaint; and Respondent cooperated in the resolution of this Complaint.
18. 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 this complaint.

CONCLUSIONS OF LAW

19. 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.*
20. Harold P. McCutcheon, Respondent, has the power and authority to make admissions, and otherwise act on his own behalf, and he makes such admissions, knowingly, freely, voluntarily, and without any threat of harm or act of coercion. Further, 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 consult counsel, and will proceed pro se.
21. 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).
22. 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) for each offense. W. Va. Code R. §7-1-15.1.
23. 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).
24. 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.
25. 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.

26. 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

Mr. Harold P. McCutcheon, Respondent, by affixing his signature hereon, agrees to the following:

27. Respondent is aware of his rights to be represented by counsel in this matter and 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.
28. Respondent admits he provided false or misinformation to the Board on his December 31, 2018 application for the renewal of his PE license when he responded in the negative to the question, "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 misdemeanor or felony since your last WV PE renewal?"
29. 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.
30. 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.

31. 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.
32. 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.
33. If the Board does reject this proposal, any admissions made by Respondent herein are deemed null and void.
34. 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.
35. 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.
36. 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).
37. 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 and/or Certificate of

Authorization 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.

38. 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 and/or Certificate of Authorization 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 C2019-26 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 2019-2020 WV 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 the Respondent's WV P.E. license is hereby **ORDERED REVOKED**. Said revoked license may be restored once the civil penalty is paid, and the 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, except as to the provisions set forth in paragraph 6, above, regarding revocation of the Respondent's WV P.E. license, and its effects shall survive the closure of this Consent Order.
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:

RESPONDENT



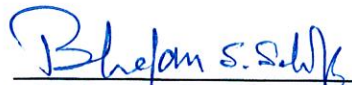
HAROLD P. MCCUTCHEON

10/5/19

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 17 day of October, 2019.

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

By: 

BHAJAN S. SALUJA, P.E.
BOARD PRESIDENT