

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

IN RE: THURMAN W. WHISNER

C2011-11

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Edward L. Robinson, P.E., its President, for the purpose of agreeing to disciplinary action to be taken against Thurman W. Whisner (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 allegations set forth in this Complaint are matters that are within the jurisdiction of this Board, which is a State entity required and authorized to regulate the practice of engineering in West Virginia pursuant to West Virginia Code § 30-13-1 *et seq.*
2. Respondent Thurman W. Whisner is a licensed professional engineer in the State of West Virginia and holding PE license number 07816.
3. The Board-initiated complaint was served by certified mail on April 5, 2011, citing misuse of seal and negligence, incompetence or committing an act of misconduct in the practice of engineering.
4. A response to the Complaint was served on May 16, 2011, by Respondent's counsel.
5. The allegations in the Complaint were as follows: Respondent sealed and signed a sketch of a rigid rafter connection which provided no significant detail or any engineering information and which was prepared by a house designer. The sketch did not meet the rafter notching specification of the 2009 International Building Code (I.R.C. R. 802.7) and was made in connection with a building under construction. The building inspector

had stopped the construction for this reason, but allowed the builder to continue when Respondent signed and sealed the sketch. The sketch was not titled, and Respondent's seal had no date. Although Respondent stated he had no knowledge of the purpose for which the sketch he sealed was to be used, he required changes on the drawing which were not made prior to Respondent sealing and signing the drawing.

6. Respondent admits the above allegations and that his engineering work in connection with this project did not conform to the standards and practices required of a reasonably prudent professional engineer.
7. The Board finds these admissions are an admission of negligence in the practice of engineering.
8. Respondent Whisner admits that he sealed a document that he had not prepared or completely checked, and the Board finds this admission to constitute misuse of seal.
9. In mitigation of the admitted violations, Respondent states he received no compensation for the task, he signed the sketch as a favor, he acted in good faith and in reliance on the contractor's representation that the concept plan was not for approval purposes and was not to be used for construction purposes, and that he has been a professional engineer in good standing since 1978.
10. The Board finds that West Virginia engineering law applies to all work performed by an professional engineer and all work which is sealed by professional engineer, regardless of the compensation received or not received for such work.

11. In determining the amount of a civil penalty to be assessed, the Board has considered the following factors: the circumstances leading to the violation; the minimal risk of harm to the public; no history of previous violations; the extent to which the Respondent cooperated with the Board and the Board's investigation; the lack of economic benefits gained by Respondent as a result of the noncompliance; and other appropriate matters.
12. The Board incurred administrative costs in connection with the investigation, but, in its discretion, agrees to resolve this Complaint without the assessment of administrative costs.

CONCLUSIONS OF LAW

13. The Board is the State entity required and authorized to regulate the practice of engineering in the State of West Virginia. W. Va. Code § 30-13-1 *et seq.*
14. All registrants are charged with having knowledge of the Rules of Professional Responsibility. W. Va. Code R. § 7-1-12.1.
15. All registrants are required to be familiar with West Virginia Code § 30-13-1 *et seq.*, this rule, and all applicable laws relating to the practice of engineering. W. Va. Code R. § 7-1-12.2(a).
16. The Board is authorized to suspend or revoke or refuse to issue, restore or renew a license or impose a civil penalty upon any licensee who has:
 - a. been negligent, incompetent or committed an act of misconduct in the practice of engineering [W. Va. Code § 30-13-21(a)(2)]; or

- b. signed 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)].
- 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).
- 18. Misuse of a West Virginia professional engineer seal subjects Respondent to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-15.1.
- 19. Professional misconduct, negligence or incompetence subjects Respondent to discipline by the Board, including a civil penalty up to One Thousand Dollars (\$1,000.00). W. Va. Code R. § 7-1-15.1.
- 20. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:
 - (a) Whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) The circumstances leading to the violation;
 - (c) The nature and severity of the violation and the risk of harm to the public;
 - (d) The history of previous violations;
 - (e) The extent to which the cited person or firm has cooperated with the Board and the Board's investigation;
 - (f) The economic benefits gained by the violator as a result of the noncompliance;
 - (g) The interest of the public; and

- (h) Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

CONSENT OF RESPONDENT

Thurman W. Whisner, individually, by affixing his signature hereon, agrees to the following:

21. Respondent has been advised by his counsel of his right to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives his right to do so if the Board accepts the terms and conditions set forth herein.
22. Respondent accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
23. Respondent acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of the six-month time limit set forth in West Virginia Code § 30-13-22(b) for the disposition of complaints. This paragraph is binding on the participants even in the event that the Board does not approve this Consent Order.
24. Respondent acknowledges that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
25. 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 the participants even if the Board does not approve this Consent Order.

26. Respondent understands that this Consent Order and the underlying Complaint are public records and 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).
27. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter may result in the rescission of this agreement, the reinstatement of the Complaint, 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

28. 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).
29. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for the misuse of his professional engineering seal.
30. The Board **ORDERS** Respondent be reprimanded for sealing a sketch that did not conform to the standards and practices required of a reasonably prudent professional

engineer and which therefore constitutes professional negligence.

31. The Board **ORDERS** that the untimely payment of the civil penalty imposed herein may result in the reinstatement of this Complaint and/or further disciplinary action by the Board.
32. The Board **ORDERS** this Consent Order and the underlying Complaint to 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).
33. 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 to enforce the terms of this Consent Order.
34. If the civil penalty imposed herein 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 (\$500.00), 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.
35. 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.

AGREED TO BY:



THURMAN W. WHISNER

08/15/11

DATE

Entered into the records of the WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS by:



EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

8/22/11

DATE

THIS CONSENT ORDER PREPARED BY:

DEBRA L. HAMILTON
DEPUTY ATTORNEY GENERAL
STATE CAPITOL, ROOM 26-E
CHARLESTON, WV 25305
304-558-2021

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