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# **Engineering Ethics for Pennsylvania Professional Engineers**

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# Chapter 1

## Overview of the Pennsylvania Engineering Ethics, Laws and Rules

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### Engineering Ethics

Engineering ethics is (1) the study of moral issues and decisions confronting individuals and organizations involved in engineering and (2) the study of related questions about moral conduct, character, ideals and relationships of peoples and organizations involved in technological development (Martin and Schinzinger, *Ethics in Engineering*).

### State Registration Board for Professional Engineers, Land Surveyors and Geologists

The Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) was established to regulate the practice, licensure and registration of engineers, land surveyors and geologists in the Commonwealth of Pennsylvania in order to safeguard life, health and property and promote the general welfare. The Board reviews applications, administers examinations, licenses qualified applicants, and regulates the professional practice of licensees throughout the state. The Board has the power to adopt rules, set standards for licensure, adopt mandatory standards of professional conduct and ethics, and investigate and discipline unauthorized, negligent, unethical or incompetent practice.

The Board consists of the Commissioner of Professional and Occupational Affairs, three members appointed by the Governor who represent the public at large and nine members appointed by the Governor, five of whom are registered professional engineers, two of whom are registered professional land surveyors and two of whom are registered professional geologists.

The Board has the authority to implement provisions of Pennsylvania ACT 367, "Engineer, Land Surveyor and Geologist Registration Law" and the Pennsylvania Code, Chapter 37 "State Registration Board for Professional Engineers, Land Surveyors and Geologist" rules and regulations.

### The Pennsylvania Acts (Laws)

The Pennsylvania Acts are a collection of state laws organized by subject area into a code made up of act numbers and sections. Act 367, "Engineer, Land Surveyor And Geologist Registration Law" was created by the Pennsylvania General Assembly in the interest of public health and safety to regulate the practice of engineering in the State of Pennsylvania. It is last updated in May 2004 by laws that create, amend, or repeal statutory material. The Pennsylvania Acts state the law followed by the history of the law which indicates when it was originally filed and subsequent effective dates of enactment.

Pertinent sections of Act 367, which relate to the code of professional conduct and responsibility, are presented in Chapter 2 below.

### **The Pennsylvania Code (Rules)**

The Pennsylvania Code is the official publication of the Commonwealth of Pennsylvania. It is a compilation of the rules and regulations of the Pennsylvania regulatory agencies and it is organized by titles and chapters with each chapter number representing a department, commission, board or other agency. Chapter 37 of the rules was created to regulate the practice of engineering, land surveying and geology in the State of Pennsylvania and was last updated on October 9, 2010. The Board rules state the rule followed by the history of the rule which indicates when it was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date.

Pertinent sections of Chapter 37, which relate to the code of professional conduct and responsibility, are presented in Chapter 3 below.

### **Pennsylvania Board Disciplinary Authority**

The Board is charged with the duty of issuing certificates of registration to those professional engineers, land surveyors and geologists it has determined to be qualified. It has the authority and responsibility to revoke these certificates when licensees are convicted with charges of gross incompetence or professional misconduct.

The Board has the authority to sentence a licensee, for a first offense, to pay a fine not exceeding one thousand dollars, or suffer imprisonment, not exceeding three months, or both. For a second or subsequent offense whereby the licensee is convicted with felony charges, the Board has the authority to sentence the licensee to pay a fine of not less than two thousand dollars but not more than five thousand dollars or to imprisonment for not less than one year but not more than two years, or both.

In addition to any other civil remedy or criminal penalty provided, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of six members, whichever is greater, has the authority to levy a civil penalty of up to one thousand dollars on any current licensee who violates any provision of the act or on any person who practices the profession of an engineer, land surveyor or geologist without being properly licensed to do so under the act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing.

The disciplinary process of the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists is illustrated in Chapter 4 below. Several disciplinary cases, presented in Chapter 5 below, were selected at random to further illustrate the disciplinary actions taken by the Board. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Board.

## Chapter 2

# Pennsylvania Act 367 (Updated May 2004)

### ACT 367: ENGINEER, LAND SURVEYOR AND GEOLOGIST REGISTRATION LAW

*The following are excerpts from Act 37 of the Pennsylvania Acts. If you wish to review the entire act, please visit the website of the Pennsylvania Board at:*

<http://www.portal.state.pa.us/portal/server.pt?open=18&objID=487794&mode=2>

#### **Section 3. Practice of Engineering, Land Surveying or Geology With-out Licensure and Registration Prohibited.**

(a) In order to safeguard life, health or property and to promote the general welfare, it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer, for any person to practice or to offer to practice land surveying, unless he is licensed and registered under the laws of this Commonwealth as a professional land surveyor or for any person to practice or to offer to practice geology unless he is licensed and registered under the laws of this Commonwealth as a professional geologist. Individuals licensed as professional engineers, professional land surveyors or registered landscape architects may perform geological work which is incidental to their engineering, surveying or landscape architecture without being licensed as a professional geologist.

(b) A person shall be construed to practice or offer to practice engineering, land surveying or geology who practices any branch of the profession of engineering, land surveying or geology; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist, or through the use of some other title implies that he is an engineer, land surveyor or geologist or that he is registered under this act; or who holds himself out as able to perform, or who does perform any engineering, land surveying or geological service or work or any other service designated by the practitioner or recognized as engineering, land surveying or geology.

*(3 amended Dec. 16, 1992, P.L.1151, No.151)*

#### **Section 4. General Powers of Board.**

(d) Suspension and Revocation of Licenses; Registrations and Certificates; Reinstatements: The board shall have power to suspend or revoke the license and registration of any professional engineer, professional land surveyor or professional geologist or the certificate of any engineer-in-training or surveyor-in-training, who is found guilty by the board, by a majority vote of all its members, of the practice of any fraud, deceit or misrepresentation in obtaining his license, certification or registration, or of gross negligence, incompetency or misconduct in the practice of engineering, in the practice of land surveying or in the practice of geology, or of violation of the code of ethics of the

engineering profession, and to reinstate suspended licenses, registrations and certificates in any cases where a majority of all the members of the board shall determine the same to be just and proper. Unless ordered to do so by a court, the board shall not reinstate the license, certificate or registration of a person to practice as a professional engineer, professional land surveyor, professional geologist or an engineer-in-training or a surveyor-in-training which has been revoked, and such person shall be required to apply for a license, certificate or registration after a period of five years in accordance with section 2 if he desires to practice at any time after such revocation. The board shall require a person whose license or registration has been suspended or revoked to return the license or registration in such manner as the board directs. Failure to do so shall be a misdemeanor of the third degree. Misconduct in the practice of engineering, land surveying or geology shall include, but not be limited to conviction for a criminal offense such as extortion, bribery or fraud or entry of a plea of nolo contendere to a charge thereof for conduct relating to the practice of engineering, land surveying or geology, or has violated any provision of this act or any regulation promulgated by the board. For the purposes of this subsection, the code of ethics is as follows:

It shall be considered unprofessional and inconsistent with honor-able and dignified bearing for any professional engineer, professional land surveyor or professional geologist:

- (1) To act for his client or employer in professional matters other-wise than as a faithful agent or trustee, or to accept any remuneration other than his stated recompense for services rendered.
- (2) To attempt to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone.
- (3) To attempt to supplant another engineer, land surveyor or geologist after definite steps have been taken toward his employment.
- (4) To compete with another engineer, land surveyor or geologist for employment by the use of unethical practices.
- (5) To review the work of another engineer, land surveyor or geologist for the same client, except with the knowledge of such engineer, land surveyor or geologist, or unless the connection of such engineer, land surveyor or geologist with the work has terminated.
- (6) To attempt to obtain or render technical services or assistance without fair and just compensation commensurate with the services rendered: Provided, however, the donation of such services to a civic, charitable, religious or eleemosynary organization shall not be deemed a violation.
- (7) To advertise in self-laudatory language, or in any other manner, derogatory to the dignity of the profession.
- (8) To attempt to practice in any field of engineering, land surveying or geology in which the registrant is not proficient.
- (9) To use or permit the use of his professional seal on work over which he was not in responsible charge.
- (10) To aid or abet any person in the practice of engineering, land surveying or geology not in accordance with the provision of this act or prior laws.



The board shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings as may be required under this subsection.

The board shall have the power to adopt and promulgate rules and regulations setting forth the functions, powers, standards and duties to be followed by the hearing examiners.

The hearing examiners shall have the power to conduct hearings in accordance with the regulations of the board, and to issue subpoenas requiring the attendance and testimony of individuals or the production of, pertinent books, records, documents and papers by persons whom they believe to have information relevant to any matter pending before the examiner. Such examiner shall also have the power to administer oaths.

The hearing examiner shall hear evidence submitted and arguments of counsel, if any, with reasonable dispatch, and shall promptly record his decision, supported by findings of fact, and a copy thereof shall immediately be sent to the board and to counsel of record, or the parties, if not represented.

If application for review is made to the board within twenty days from the date of any decision made as a result of a hearing held by a hearing examiner, the board shall review the evidence, and if deemed advisable by the board, hear argument and additional evidence. As soon as practicable, the board shall make a decision and shall file the same with its finding of the facts on which it is based and send a copy thereof to each of the parties in dispute.

*(4 amended Dec. 16, 1992, P.L. 1151, No. 151)*

**Section 4.1. State Registration Board for Professional Engineers, Land Surveyors and Geologists.**

(a) There is hereby established within the Department of State the State Registration Board for Professional Engineers, Land Surveyors and Geologists. The board shall consist of the Commissioner of Professional and Occupational Affairs, three members appointed by the Governor who shall be persons representing the public at large and nine members appointed by the Governor, five of whom shall be registered professional engineers, two of whom shall be registered professional land surveyors and two of whom shall be registered professional geologists. Any land surveyor appointed to serve on the board shall have received the land surveyor license upon the passage of the appropriate examination. Any geologist licensed under section 4.4 of this act shall be eligible for appointment to the board. The professional members of the board shall be so selected that not more than two of them shall specialize in any one of the five major disciplines of engineering: civil, mining and metallurgical, mechanical, electrical and chemical. Each member of the board shall be a citizen of the United States and a resident of this Commonwealth. Each professional member shall have been engaged in the practice of the respective profession for at least ten years and shall have been in responsible charge of work for at least five years. *((a) amended Nov. 25, 2002, P.L. 1113, No. 136)*

(b) The terms of members of the board shall be six years, or until his successor has been appointed and qualified but not longer than six months beyond the six-year period. In the event that any of said members shall die or resign during his term, his successor shall be appointed in the same way and with the same qualifications and shall hold office for the unexpired term. No member shall be eligible for appointment to serve more than two consecutive full terms.

(c) Seven members of the board shall constitute a quorum. A member may not be



counted as part of a quorum or vote on any issue, other than temporary and automatic suspension, under this act unless he is physically in attendance at the meeting.

*(4.1 amended Dec. 16, 1992, P.L. 1151, No.151)*

#### **Section 4.5. Continuing Professional Competency Requirements.**

(a) In order to safeguard life, health and property and to promote the public welfare, the practice of professional engineering, professional land surveying and professional geology in this commonwealth requires continuing professional education.

(b) Each licensee shall be required to meet the continuing professional competency requirements of this section as a condition for licensure renewal. Continuing professional competency obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, including law and ethics applicable to the profession, or develop new and relevant skills and knowledge. No credit shall be given for a course in practice building or office management.

(c) Each licensee shall be required to obtain twenty-four PDH units during the biennial renewal period. If a licensee exceeds the requirement in any renewal period, a maximum of twelve PDH units may be carried forward into the subsequent renewal period. PDH units may be earned as follows:

- (1) Successful completion of college courses relevant to professional practice.
  - (2) Completion of continuing education courses relevant to professional practice.
  - (3) Completion of correspondence, televised, videotaped and other short courses or tutorials relevant to professional practice.
  - (4) Completion of seminars, employer-sponsored courses, workshops of professional or technical presentations made at meetings, conventions or conferences relevant to professional practice.
  - (5) Teaching, presenting or instructing in any of the activities listed in clauses (1), (2), (3), and (4).
  - (6) Authoring published papers, articles or books relevant to professional practices.
  - (7) Obtaining patents relevant to professional practice.
- (d) (1) Except as provided in clause (2), units of other types of credit shall be converted to PDH units as follows:
- (i) One college or unit semester hour shall equal forty-five PDH units.
  - (ii) One College or unit quarter hours shall equal thirty PDH units.
  - (iii) One continuing education unit shall equal ten PDH units.
  - (iv) One hour of professional, technical presentations made at meetings, employer-sponsored courses, conventions or conferences shall equal one PDH unit.
  - (v) Each published paper, article or book shall equal ten PDH units.
  - (vi) Each patent obtained shall equal ten PDH units.

(2) Teaching any of the activities listed in the clause (1) (i), (ii), (III), and (iv) shall equal double the amount of PDH units provided for those subclauses. Teaching credit shall be awarded for teaching a course or seminar but shall not be rewarded to full time faculty members in the performance of their duties at their employing intuitions.

(e) The board shall not require courses to be pre-approved. The board may pre-approve course providers. The board shall have final authority regarding approval of courses, credit, PDH value for courses and other methods of earning credit. Credit determination for activities listed in subsection (d) (1) (v) and (VI) shall be the responsibility of the licensee. The board shall accept credits earned in other jurisdictions if the activity otherwise complies with this section.

(f) The licensee shall be responsible for maintaining records to be used to support credits claimed. Required records shall include all of the following:

(1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name and PDH credits earned.

(2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(g) (1) A licensee may be exempt from the requirements of this section for any of the following reasons:

(i) A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty consecutive days in a year shall be exempt from obtaining the professional development hours required that day.

(ii) A licensee experiencing physical disability, illness or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(2) An individual applying for initial licensure and registration shall be exempt from the following requirement set forth in subsection (a) for the licensure period immediately following initial licensure and registration.

(h) As part of the process to reactivate a licensee, a licensee must obtain all delinquent PDH units, except that under no circumstances shall a licensee be required to obtain more than the biennial renewal requirement.

### **Section 7. Seal of Registrants.**

(a) Each person, registered under this act, shall obtain a seal of a design authorized by the board which shall bear the registrant's name and number and the legend "Registered Professional Engineer," "Registered Professional Land Surveyor" or "Registered Professional Geologist." Such seal, or a facsimile imprint of same, shall be stamped on all plans, specifications, plats and reports issued by a professional engineer, professional land surveyor or professional geologist.

(b) It shall be unlawful for any person to use such seal during the period the license or registration of the holder thereof has been suspended or revoked, or to use a seal of any design not approved by the board.

*(7 amended Dec. 16, 1992, P.L.1151, No.151)*

**Section 8. Procedure for the Suspension and Revocation of Licenses and Registrations; Appeals.**

Before the license of any licensee, or any registration, or any certification is suspended or revoked by the board, a written copy of the complaint made shall be furnished to the licensee, registrant, or person against whom the same is directed, and an opportunity be afforded him to be heard before the board personally and by counsel. At least ten days' written notice of the time and place of such hearing shall be given the licensee, registrant or person by registered mail addressed to the post office address as shown on the biennial registration, or other record, or information in possession of the board. (*Par. amended Dec. 17, 1959, P.L.1885, No.688*)

*(8 repealed in part Apr. 28, 1978, P.L.202, No.53)*

**Section 10.1. Temporary and Automatic Suspensions.**

(a) A license issued under this act may be temporarily suspended under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than one hundred eighty days.

(b) A license issued under this act shall automatically be suspended upon the legal commitment to an institution of a licensee because of mental incompetency from any cause upon filing with the board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this sub-section, the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this subsection shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as hereinafter provided in the case of revocation or suspension of such license.

(c) An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reports of alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

*(10.1 added Dec. 19, 1990, P.L.782, No.192)*

## **Section 10.2. Reporting of Multiple Licensure.**

Any licensee of this Commonwealth who is also licensed to practice engineering, land surveying or geology in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in other states, territories or countries shall be reported to the board on the biennial renewal application or within ninety days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the engineer's, land surveyor's or geologist's record, and each state, territory or country shall be notified by the board of any disciplinary action taken against the licensee in this Commonwealth.

*(10.2 amended Dec. 16, 1992, P.L. 1151, No. 151)*

## **Section 11. Penalties.**

(a) Whoever shall engage in the practice of engineering, the practice of land surveying or the practice of geology without being licensed and registered as required by this act, or exempted therefrom, as provided in this act, or shall present or attempt to use, as his own, the license or certificate of registration of another, or shall give any false or forged evidence of any kind to the board, or to any member thereof, in order to obtain a license or registration as a professional engineer, professional land surveyor or professional geologist or a certificate as an engineer-in-training or surveyor-in-training, or shall use any expired, suspended or revoked certificate of registration, or shall otherwise violate the provisions of this act, shall be guilty of a summary offense and upon conviction thereof for a first offense, shall be sentenced to pay a fine not exceeding one thousand dollars, or suffer imprisonment, not exceeding three months, or both and for a second or subsequent offense shall be guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not less than two thousand dollars but not more than five thousand dollars or to imprisonment for not less than one year but not more than two years, or both.

(b) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of six members, whichever is greater, may levy a civil penalty of up to one thousand dollars on any current licensee who violates any provision of this act or on any person who practices the profession of an engineer, land surveyor or geologist without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

*(11 amended Dec. 16, 1992, P.L. 1151, No. 151)*

## **Section 11.1. Injunction Against Unlawful Practice.**

It shall be unlawful for any person to practice, or attempt to offer to practice, engineering, land surveying or geology, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice of engineering, land surveying or geology, as defined in this act, may be enjoined by the courts on petition of the board or the Commissioner of Professional and

Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the unlawful practice of engineering, land surveying or geology, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment.

*(11.1 amended Dec. 16, 1992, P.L. 1151, No. 151)*

**Section 11.2. Investigative Subpoena.**

The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing held or had by it. Client records may not be subpoenaed without consent of the client or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoenas as are necessary to prevent unnecessary intrusion in client confidential information. The board is authorized to apply to the Common-wealth Court to enforce its subpoenas.

*(11.2 added Dec. 19, 1990, P.L. 782, No. 192)*

**Section 12. Repeal.**

The act approved the sixth day of May, one thousand nine hundred and twenty-seven (Pamphlet Laws, eight hundred twenty), is hereby repealed, except that said act shall not be repealed in so far as applications for licensure shall be made thereunder by honorably discharged members of the armed forces of the United States, and for such purposes the said act shall remain in full force and effect until two years after proclamation by the President of the United States that hostilities in all wars in which the United States is now engaged have ceased.

## Chapter 3

# Pennsylvania Code - Chapter 37 (Updated October 9, 2010)

### CHAPTER 37: STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

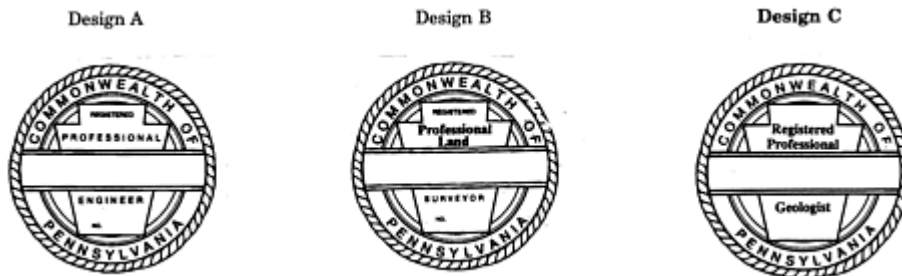
*The following are excerpts from Chapter 37 of the Pennsylvania Codes. If you wish to review the entire chapter, please visit the website of the Pennsylvania Board at:*

<http://www.pacode.com/secure/data/049/chapter37/chap37toc.html>

#### REGISTRATION NUMBER AND SEAL

##### § 37.58. Seal.

(a) A registrant shall obtain, at the registrant's own expense, a seal in the design authorized by the Board. The following are Board authorized seals for "Registered Professional Engineer" (Design A), "Registered Professional Land Surveyor" (Design B) and "Registered Professional Geologist" (Design C):



(b) The seal shall contain the legend "Registered Professional Engineer," "Registered Professional Land Surveyor" or "Registered Professional Geologist" and the registrant's name and registration number.

(c) The seal shall be 1 3/4 inch in diameter. The diameter of a pocket seal may be reduced to 1 1/2 inch if the design is in the same relative proportions in subsection (a).

(d) A registrant may use a rubber stamp or computer image which is a facsimile of the seal, if the registrant first obtains a seal in accordance with this section.

**Source:** The provisions of this § 37.58 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518; amended October 25, 1996, effective October 26, 1996, 26 Pa.B. 5106. Immediately preceding text appears at serial pages (206177) to (206178).

**§ 37.59. Use of seal.**

The following rules govern the proper use of a registrant's seal:

(1) A registrant may use his seal and signature only when the work being sealed and signed was prepared by the registrant or under the registrant's complete direction and control.

(2) When a registrant issues final or complete documents to a client for the client's records, or when a registrant submits final or complete documents to public or governmental agencies for final review, the seal and signature of the registrant who prepared or who directed and controlled the preparation of the documents, along with the date of issuance, shall be prominently displayed on the first page of all documents. Facsimile seals shall appear on all subsequent pages of plans or plats.

(3) When multiple registrants prepare or direct and control the preparation of documents, each registrant's seal and signature shall appear on the first page of the documents, or on the first page of the identifiable portion or section of the documents which were prepared or directed and controlled by that registrant, if the respective registrants' direction and control can be reasonably segregated.

(4) When a registrant's signature is applied, it shall be applied near or across the seal, but not in a location that obliterates the registration number.

(5) A registrant may not affix or permit a seal and signature to be affixed to a document after the expiration of the registrant's licensure status, or for the purpose of aiding or abetting another person to evade or attempt to evade a provision of the act or this chapter.

(6) In the case of a temporary permit issued to an engineering, land surveying or geology registrant of another state, the registrant shall use the seal of the registrant's home state and shall affix his signature and a copy of the temporary permit to work performed in this Commonwealth.

**Source:** The provisions of this § 37.59 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518; amended October 25, 1996, effective October 26, 1996, 26 Pa.B. 5106. Immediately preceding text appears at serial pages (206178) to (206179).

**DISCIPLINARY PROCESS AND PROCEDURES**

**§ 37.81. Misconduct.**

A professional engineer, professional land surveyor or professional geologist who is found guilty by the Board of gross negligence, incompetency or misconduct in the practice of engineering, land surveying or geology or of a violation of the Code of Ethics of the profession of engineering or land surveying is subject to disciplinary action under section 4(g) of the act (63 P. S. § 151(g)). Misconduct in the practice of engineering, land surveying or geology includes the following:



(1) Being convicted of a criminal offense such as extortion, bribery or fraud or entry of a plea of nolo contendere to a charge thereof for conduct relating to the practice of engineering, land surveying or geology.

(2) Being unable to practice engineering, land surveying or geology with reasonable skill and safety by reason of drunkenness, use of controlled substances, chemicals or other types of inhibiting materials, or as a result of a mental or physical incapacity which prevents the practice of engineering, land surveying or geology.

(3) Failing to exercise supervision over a person who is authorized by the employer to practice engineering, land surveying or geology only under the supervision of a professional engineer, professional land surveyor or professional geologist.

(4) Delegating responsible charge to an individual who the professional engineer, professional land surveyor or professional geologist knows or has reason to know is not qualified by training or experience to personally and independently engage in and be entrusted with the work involved in the practice of engineering, land surveying or geology.

(5) Being convicted of a felony in a state or Federal court or being convicted of a misdemeanor in the practice of engineering, land surveying or geology. As used in this paragraph, the term "convicted" includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.

(6) Making misleading, deceptive, untrue or fraudulent representations in the practice of engineering, land surveying or geology.

(7) Practicing fraud or deceit in obtaining a license to practice engineering, land surveying or geology.

(8) Submitting a false or deceptive biennial registration to the Board.

(9) Reviewing on behalf of a public entity or an agency of government plans on which the individual performing the review, or a member or employe of the individual's firm, has participated in any manner, including an advisory capacity. A violation of the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. §§ 401—413), known as the Public Official and Employee Ethics Law, as the violation relates to the practice of engineering, land surveying or geology, is a violation of this section and chapter.

(10) Violating a provision of the act or this chapter.

(11) Having a license to practice engineering, land surveying or geology suspended or revoked or having other disciplinary action taken for conduct relating to the practice of engineering, land surveying or geology, by the proper licensing authority of another state, territory or country.

**Source:** The provisions of this § 37.81 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518; amended October 25, 1996, effective October 26, 1996, 26 Pa.B. 5106. Immediately preceding text appears at serial pages (206181) to (206182).

### **§ 37.82. Complaints.**

An individual, firm or corporation who has reason to believe that a professional engineer, professional land surveyor or professional geologist has engaged in gross negligence, incompetency or misconduct in the practice of engineering, land surveying or geology or has

violated the act or this chapter, shall report the action to the Complaints Office of the Bureau of Professional and Occupational Affairs by telephoning the Complaints Office at 1 (800) 822-2113 or by submitting a written complaint to the Complaints Officer of the Bureau of Professional and Occupational Affairs, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, charging the professional engineer, professional land surveyor or professional geologist with a violation of the act, and specifying the grounds upon which the complaint is based.

**Source:** The provisions of this § 37.82 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518; amended October 25, 1996, effective October 26, 1996, 26 Pa.B. 5106. Immediately preceding text appears at serial page (206182).

### **§ 37.83. Hearing examiners.**

(a) *Powers and duties of hearing examiners.* The hearing examiner appointed by the Board shall have the following powers and duties:

(1) To regulate the course of the hearing, including the scheduling thereof, and the recessing, reconvening and adjournment of the hearing, if at least 20 days notice of the date of the hearing or a continuance thereof is given to the Board counsel, on behalf of the Board.

(2) To administer oaths and affirmations.

(3) To issue subpoenas requiring the attendance and testimony of individuals or the production of pertinent records, documents and papers by persons believed to have information relevant to a matter pending before the hearing examiner.

(4) To rule upon offers of proof and receive evidence.

(5) To hold appropriate conferences before or during hearings.

(6) To hear evidence submitted and arguments of counsel, if any.

(b) *Certification of record with or without a proposed report.*

(1) Unless otherwise provided by order of the Board, the hearing examiner shall review the record in light of the applicable law, and promptly prepare, certify and file with the prothonotary of the Bureau and with the Board counsel, on behalf of the Board a proposed report in accordance with 1 Pa. Code § 35.205 (relating to contents of proposed reports), a copy of the transcript of record of the hearing and the briefs, if any, filed in the proceeding. A copy of the proposed report shall also be provided to counsel of record, or to the parties, if they are not represented.

(2) When, in the opinion of the Board, the factual allegations of a complaint involve issues which require knowledge of complex engineering, land surveying or geology principles to properly decide the merits of a case, the Board will issue an order directing the hearing examiner to preside at the formal hearing and to perform the duties in subsection (a), but, to certify and file with the prothonotary of the Bureau and with the Board counsel, on behalf of the Board, the entire record of the case without a proposed report.

**Source:** The provisions of this § 37.83 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518; amended October 25, 1996, effective October 26, 1996, 26 Pa.B. 5106. Immediately preceding text appears at serial pages (206182) to (206183).

## **EXCEPTIONS**

### **§ 37.101. Exceptions to the hearing examiner’s decision.**

(a) A participant desiring to except to a hearing examiner’s decision shall, within 30 days after the service of a copy of the proposed report, file exceptions to the proposed report in a brief, designated as a “Brief On Exceptions.” A “Brief Opposing Exceptions” may be filed in response to a Brief On Exceptions within 20 days after service of a copy of the Brief On Exceptions. Further response will not be entertained by the Board.

(b) The content and form of briefs on exceptions shall be in accordance with 1 Pa. Code § 35.212 (relating to content and form of briefs on exceptions).

(c) Failure to file a brief on exceptions within the time specified in subsection (a) constitutes a waiver of objections to the proposed report. The Board will thereupon commence its review of the proposed report and prepare and issue the final order of the Board, which will either be an order adopting the hearing examiner’s proposed report or an adjudication and order of the Board. This subsection supplements 1 Pa. Code § 35.226 (relating to final orders).

**Source:** The provisions of this § 37.101 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518.

### **§ 37.102. Appeal from the Board decision.**

A party aggrieved by the Board’s decision may, within 30 days after the entry of the order, appeal to the Commonwealth Court in accordance with the applicable rules of appellate procedure.

**Source:** The provisions of this § 37.102 adopted January 21, 1994, effective January 22, 1994, 24 Pa.B. 518; amended June 4, 1999, effective June 5, 1999, 29 Pa.B. 2857. Immediately preceding text appears at serial page (221148).

# Chapter 4

## Disciplinary Process

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### **Complaint Procedures**

When a completed Statement of Complaint Form is received by the Pennsylvania Department of State Professional Compliance Office, a file is opened and forwarded to a legal assistant who reviews it and determines whether or not an investigation is required. In making this determination, the legal assistant may confer with a prosecuting attorney in the Department's Legal Office.

### **Investigation**

Some complaints contain within themselves all the information that is necessary to determine whether a violation of the licensing law has occurred, and those complaints do not require investigation. Most complaints, however, involve issues of credibility, require that witnesses be interviewed, and/or require that documents, including medical records or contracts, be obtained for review by the Legal Office. Those complaints will be forwarded to the Department's Bureau of Enforcement and Investigation with a request that investigators obtain the necessary information to enable us to determine whether disciplinary charges should be filed against the licensee against whom the complaint was made. Investigations can take anywhere from a few days to several months, depending on the complexity of the case.

### **Charges and Hearings**

Once the investigation is complete, the Bureau of Enforcement and Investigation forwards the investigation report to the Professional Compliance Office, which sends the matter to a prosecuting attorney for review and determination as to whether or not formal disciplinary charges should be filed. If there is not enough evidence to warrant the filing of a disciplinary action, the case is closed. The prosecuting attorney sends a letter to the Complainant notifying the Complainant of that action.

If the evidence supports the filing of formal disciplinary charges against the licensee, the prosecuting attorney initiates the action by preparing an Order to Show Cause. The Order to Show Cause sets forth allegations and directs the licensee (Respondent) to file a written answer to those allegations within 30 days.

After the Respondent files an answer, the matter is generally scheduled for hearing. If the matter is scheduled for hearing, the case is heard and a decision, known as an Adjudication and Order, is rendered, usually within six (6) months after the evidentiary record has been closed. If the Respondent is unhappy with the outcome, he or she may appeal the decision to the Commonwealth Court.

### Settlements and Disciplinary Actions

Some matters are amenable to settlement by means of a legal document known as a Consent Agreement and Order. Either party, the Commonwealth or the Respondent, may approach the other about a possible settlement. In reaching a settlement, the parties negotiate the facts to which they will agree for the purposes of settlement and also negotiate an agreed-upon penalty that they believe will be acceptable to the Board. All Consent Agreements and Orders must be presented to and approved by the Board in order to become final.

Final Adjudications and Orders and Board-approved Consent Agreements and Orders generally represent disciplinary action of some sort against a licensee or an unlicensed individual. All disciplinary actions become a permanent part of the licensee's record on file with the Board. Disciplinary actions are a matter of public record and are subject to release by the Department of State's Office of Communications and Press to various news agencies in the Commonwealth.

Below are the civil penalties imposed by the Board:

Violation Under 63 P. S.	Title/Description	Penalties
Section 150(b)	Representing oneself as an engineer, land surveyor or geologist on sign, advertisement, letterhead or card, without being licensed or registered	1st offense: \$1,000 2nd offense: formal action
Section 151(e)	Biennial renewal: Practicing on a lapsed license or registration	1st offense: -Up thru 5 months: \$500 -6 months thru 1 year: \$1,000 -over 1 year: formal action 2nd offense: formal action

## Chapter 5

# Review of Disciplinary Cases

The following disciplinary cases were extracted from the Disciplinary Actions web page of the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists. These cases were randomly selected from various Board Disciplinary Action listings dated September 2009 to December 2010. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Georgia Board.

### Case No. 1

**Effective Date:** July 21, 2010

The Respondent was ordered to pay a civil penalty in the amount of \$250, as well as take and successfully complete a five-hour continuing education course on ethics, because his license to practice engineering was disciplined by the proper licensing authority of another state.

### Case No. 2

**Effective Date:** March 17, 2010

The Respondent was ordered to pay a civil penalty of \$2,000 and the he affirms that he has reported all instances of engineering practice during the period of lapsed certificate of licensure because he practiced engineering without having at the time of so doing a valid, unexpired, unrevoked license properly registered under the practice act.

### Case No. 3

**Effective Date:** November 20, 2009

The Respondent was indefinitely suspended and ordered to pay a civil penalty of \$2,000 because he displayed incompetency and practiced in a field in which he was not proficient, and because he failed to act as a faithful agent of his client.

### Case No. 4

**Effective Date:** November 18, 2009

The Respondent was ordered to pay a civil penalty of \$4,550 and a public reprimand was placed on his Board record because he practiced professional engineering on multiple occasions during a time in which he held no current, valid certificate of registration; his certificate was lapsed from Oct. 1, 2003, through Jan. 31, 2007.

**Case No. 5**

**Effective Date:** November 18, 2009

The Respondent was indefinitely suspended and was ordered to immediately cease and desist the practice of the profession. He can apply for reinstatement no sooner than five years from the date of his consent agreement and order because he violated the practice act in that he has been convicted of multiple felonies, including a criminal offense for conduct relating to the practice of engineering, land surveying, or geology.

**Case No. 6**

**Effective Date:** September 16, 2009

The Respondent was ordered to pay a civil penalty of \$12,000 and to cease and to cease and desist from the practice of professional engineering personally and/or through his corporation. He is to notify any client who received a letter implying in any way that the design, installation, or construction of any structure or system had been reviewed or approved by a professional engineer that, in fact, no such approval was ever given. He is to destroy all copies of the engineering seal that he previously used in his job work.

This is because the Respondent practiced engineering when he provided a service reserved solely to licensed, registered professional engineers in that on numerous occasions he provided a professional engineering seal on documents related to his services to customers of his business and/or provided documents bearing a professional engineering seal for submission to municipal authorities all without the participation, direction, supervision, or permission of the sealing engineer.



# Appendix A

## References

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Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists

[http://www.portal.state.pa.us/portal/server.pt/community/state\\_registration\\_board\\_for\\_professional\\_engineers%2C\\_land\\_surveyors\\_and\\_geologists/12510](http://www.portal.state.pa.us/portal/server.pt/community/state_registration_board_for_professional_engineers%2C_land_surveyors_and_geologists/12510)

Pennsylvania Board Consumer Information

[http://www.portal.state.pa.us/portal/server.pt/community/state\\_registration\\_board\\_for\\_professional\\_engineers\\_land\\_surveyors\\_and\\_geologists/12510/consumer\\_information/572025](http://www.portal.state.pa.us/portal/server.pt/community/state_registration_board_for_professional_engineers_land_surveyors_and_geologists/12510/consumer_information/572025)

Pennsylvania Act 367 (Registration Law)

<http://www.portal.state.pa.us/portal/server.pt?open=18&objID=487794&mode=2>

Special Notice: Continuing Education Requirements

[http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS\\_0\\_185581\\_827826\\_0\\_0\\_18/EngLSGeoCESpecialNotice5.10.pdf](http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_185581_827826_0_0_18/EngLSGeoCESpecialNotice5.10.pdf)

The Pennsylvania Code, Chapter 37 (Rules and Regulations)

<http://www.pacode.com/secure/data/049/chapter37/chap37toc.html>

How Complaints are Handled

[http://www.portal.state.pa.us/portal/server.pt/community/general\\_information/12501/how\\_complaints\\_are\\_handled/571973](http://www.portal.state.pa.us/portal/server.pt/community/general_information/12501/how_complaints_are_handled/571973)

Act 48 – Schedule of Civil Penalties

<http://www.pacode.com/secure/data/049/chapter43b/s43b.13a.html>

Disciplinary Actions

[http://www.portal.state.pa.us/portal/server.pt/community/x\\_disciplinary\\_actions/12528](http://www.portal.state.pa.us/portal/server.pt/community/x_disciplinary_actions/12528)