

June 23, 2022

Minnesota Board of AELSLAGID
85 East 7th Place, Suite 160
St. Paul, MN 55101-2113

Re: File No. 2020-0043

Dear Board Members,

Throughout this process, we have not had an opportunity to speak directly to each other, and so let me begin this letter with an apology. In 2018, my license expired. I was unaware and so continued to refer to myself, and allow others to refer to me, as a licensed engineer, in my official biography and in places that biography was referenced. That was a mistake, an oversight on my part that I regret. I apologize for that mistake.

My work with Strong Towns, which I have pursued full time since 2012, is purely public policy advocacy. I'm a writer, a thought leader, and a public speaker. Most importantly for the sake of our conversation, I am not a practicing engineer. I do not perform any design, sign any documents, oversee the technical work of others, or pursue – or even suggest that I am open to pursuing – work as a civil engineer. I'm not your typical licensee.

In fact, I maintained my license for the sole reason that I did not want to lose it. As you all know, a professional engineering license is difficult to attain. While I don't need a license for my advocacy work – and it should be noted that Strong Towns removed all references to licensure from my biography when it became apparent this was creating conflict with you – I wanted to retain the option of practicing engineering again someday. I have since learned that I can retain my license by entering "retired" status, which I have subsequently done. I am no longer a current licensee.

We have now been through a year of litigation. Throughout the entire process, the basic facts have never been in dispute. My license expired. Being unaware, I did not update my biography to reflect that fact. When alerted to my expired status by a colleague, I immediately renewed my license. (Note: This was many weeks before you notified me of the complaint; I renewed of my own accord.) When prompted on the renewal application, I indicated that I had not referred to myself as a "professional engineer" or a related designation during the time when my license was expired. These are facts we agree on.

We also agree that I did not perform any work that required an engineering license, nor that I did anything – beyond a description of myself in my bio – that constituted the practice of engineering.

The only thing that has been in dispute is your interpretation of my intent, and the impact that interpretation will have on my advocacy work, the organization I work for, and our ability – along with the ability of other licensed professionals – to speak freely about matters of public policy.

Your staff, the violation committee, the committee's proposed official findings, and your legal team have all held that I lied, have been untruthful, misled you and the public, made false statements, and committed fraud in my actions. This is in reference to Minnesota Rules 1805.0200, Obligation to Provide Full Disclosure, Subpart 1B, which states:

A licensee or certificate holder shall be objective and truthful in all professional documents, including but not limited to plans, reports, statements, or testimony.

Along with Subpart 2, which states:

A licensee or certificate holder shall not make a false statement or fail to disclose a material fact requested in connection with an application for certification, licensure, or renewal in this state or any other state.

And Subpart 4C, which states that a licensee shall not:

engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

These are serious, even slanderous, allegations, and they are the reason we remain in conflict with each other. I'd like to make one last attempt to resolve that conflict.

Each of these allegations – being untruthful, making a false statement, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation – require a finding of intent. You are being asked to make a legal finding of fact describing my motivations. To be untruthful requires someone to state something they know is false. Likewise, to be dishonest, commit fraud, undertake deceit, or misrepresent requires a purposeful action.

When it comes to my failure to renew my license on time, all the facts support my contention that it was always my intent to maintain my license, that I, in fact, believed that my license was current and that my bio was up to date. Specifically:

- I had fulfilled my continuing education requirements. There was no obstacle preventing me from renewing.
- The violation committee was provided a transcript of the Slack message chain when I was informed my license had lapsed. As the conversation shows, I was surprised and believed that I had renewed on time, that my license was current.

- When I discovered my lapse, I took immediate steps to remedy the situation, applying for reinstatement that very day.

There is no evidence to support a finding that I actively sought to falsely claim a title, license, or designation that I did not think I had or that I was unqualified for. There is no evidence to support a finding that I lied, mislead the public, or acted in any way dishonestly in having “licensed engineer” in my bio. The reason I did not timely renew my license was because I had failed to update my address with the Board. If you insist, you can find that I was careless in allowing my license to lapse, but you can’t support a finding that I acted dishonestly, misrepresented myself, or sought to deceive people.

Now, I understand why there may be an inclination to believe nefarious motivations. I have reviewed past actions of this body and see the numerous times where people have claimed licensure they didn’t have and couldn’t obtain, then pursued or performed work for which they were not licensed to perform. Those are very serious cases, but they do not resemble my case.

My situation is unique; I was not claiming a license I was unqualified for, I clearly had intent to maintain my license, I renewed immediately when I discovered my error, and – most importantly – I did not perform any action that required a license during my lapse. I work in a realm where licensure is not required, which I recognize is different than most of your work environments. If your inclination is to equate my case with past cases you have seen, please recognize the differences, especially as it comes to your findings of my intent and motivation.

There is similar reflection to be done regarding my response on the application form itself. This is the second instance of alleged violation we are in disagreement over. As I testified to the violation committee, and as I submitted to the Administrative Law Judge, when I indicated that I had not represented myself as a professional engineer without proper licensure on my renewal form, I did so based on the assumption that this applied to the practice of engineering. Since I had neither performed nor pursued any work as an engineer, I experienced no hesitation in checking this box.

Again, I believe I understand why some of you may default to assuming that I was being dishonest, trying to misrepresent myself, or even committing a fraud by making such an indication. In reviewing past instances where you have pursued enforcement action, I see where people have lied to you in the hopes that you would not discover what they had done. These were people doing work that required a license and their dishonesty was to avoid further sanction. I’m asking you to understand how my case is different. There was simply no reason for me to engage in any dishonesty.

We are all aware that there is no possible way I can deceive you about my biography. There are over 2 million people reading the Strong Towns website each year. I give dozens of public lectures annually, many of them recorded and shared on public platforms. I’m one of the most high-profile civil engineers in the country. Clearly, if my intent was to lie or deceive you, doing

so in this way is a really stupid strategy. What would have been my motivation? I have not done anything that required a license. I have nothing to hide. I'm not foolish; I sincerely believed I was communicating clearly and honestly in my paperwork, and I hold to that contention. Most importantly, there is no basis to suggest otherwise.

I want to take a moment to clearly explain to you how we are interpreting your actions, and by "we" I mean not only myself, but the Strong Towns Board of Directors, my colleagues, and the thousands of members around the world that support our advocacy movement. We are frustrated, bewildered, and dedicated to resisting the wholly unfounded findings you are set to adopt.

We all know why we are here. A licensed engineer, David Dixon, who didn't like things I had written and published through Strong Towns, decided to research me, discovered my license had lapsed, and filed a complaint in order to precipitate the kind of enforcement action you are now contemplating. Dixon's motivations were clear and had nothing to do with safeguarding the public or the practice of engineering. He urged you to "send a clear message that frauds of this sort are not tolerated." There is no way to read Dixon's complaint other than an attempt to discredit me, my ideas, and the work that we do at Strong Towns.

Dixon's complaint needs to be seen in the context of a similar complaint filed by another engineer, Jeffrey Peltola, back in 2015. Like Dixon, Peltola was reacting to our ideas, not any practice of engineering. In his complaint, Peltola noted that I write and do public speaking, and then claimed that my advocacy speech "may have a negative effect on the profession as well as the public it serves." He referred to you a specific article I had written for Strong Towns and asked you to investigate whether I had "crossed a line" with my words.

I know some of you are frustrated by our characterization of your actions as a threat to our free speech, but **how else are we supposed to understand it?** How are these complaints not merely an attempt to use the violation process to attack our ideas? Engineers Dixon and Peltola are clearly motivated by speech and not any professional engineering work I have undertaken.

They are asking an arm of the state to do what they themselves cannot: discredit my reputation, my ideas, and the advocacy work of the organization I lead.

From the very beginning of our dialogue on this matter, I have acknowledged the mistake I made in allowing my license to lapse. As it became clear that the violation committee was unwilling to resolve this matter without an order of some kind, I agreed to sign a stipulation agreement acknowledging my violation of Minn. Stat. 326.02, subds. 1 and 3, for my use of the terms "licensed engineer," "professional engineer," and the designation "PE" during the time period when my license lapsed. In addition, I agreed to pay a fine. I requested that the findings of fact be altered to reflect the correct timeline – that I renewed my license prior to being notified of the complaint – and that references to Minnesota Rules 1805.0200 (dishonesty, misrepresentation, fraud, etc...) be removed. The violation committee refused.

Again, how are we supposed to interpret this? Other than joining our critics within the engineering profession, how should we interpret the insistence of the violation committee on including an unsupported finding of dishonesty, misrepresentation, and fraud? Why is the committee insistent on adopting incomplete findings of fact, findings distorted in a way that make me look dishonest? How should we perceive a meeting with the violation committee that focused solely on words I wrote and speeches I gave and not on any work I performed as an engineer?

The Strong Towns Board of Directors – the organization I work for – is interpreting your actions in the only way it can: That the Minnesota licensing board is using the power of the state to discredit our organization, our advocacy, and our message, that you have joined with engineers who disagree with our advocacy to stifle not only our speech, but to send a message to others within the engineering profession that they likewise should remain silent or face attack by their colleagues.

If this is not the message you intend to send, then we need to step back and come to some type of amicable agreement that allows us all to proceed without a fight over our right to free speech.

Regarding such a fight, I, on behalf of Strong Towns, filed a lawsuit in federal court against this board. That lawsuit was dismissed. The judge in that instance cited the Younger Doctrine, a precedent that holds that the state process must fully unfold before the federal court intervenes.

You brought action against me in state court as part of this proceeding. In that venue, we made similar arguments regarding our rights to free speech. The Administrative Law Judge decided that he is not able to rule on constitutional issues, even as applied. This means that our core free speech arguments have not been heard or considered.

As I'm sure you are aware, there are several prominent organizations that take issue with licensing boards and would like to see their powers dramatically curtailed. We have been in contact with some of those organizations and, as you might imagine, they find this case appealing – an engineer who does no engineering work but only advocates for public policy reform, yet is sanctioned by a licensing board in hearings that focus, not on engineering, but almost entirely on the engineer's speech. We are being encouraged to continue this fight.

Let me be clear: **I want to resolve this matter. I have no interest in prolonging this dispute.** My license is now in retirement status and, once we're done here, I hope to never have to interact with this board again. I certainly do not want to make this dispute with you a focus of my work over the coming years. I would like to resolve this matter to our mutual satisfaction and then part ways.

Neither I nor the Board of Directors at Strong Towns can accept a finding of violation of Minnesota Rules 1805.0200. There are no facts to support such a finding, so we can only interpret any such conclusion by this board as a hostile abuse of power aimed at discrediting our reform movement and intimidating other professionals who would speak up. Please, do not insist on such a finding.

Once again, I wish to apologize to this board for my lapse in licensure. I regret that mistake and have taken steps to ensure that it does not happen again. I am hopeful we can take this opportunity to resolve our differences and reach an understanding acceptable to both parties.

Sincerely,

Charles L. Marohn, Jr.