



SERVING DESIGN AND CONSTRUCTION PROFESSIONALS

March 23, 2021

VIA EMAIL: doreen.johnson@state.mn.us

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

Re: Charles Marohn; Board File No. 2020-0043

Dear Ms. Johnson:

This office represents Mr. Marohn on the above Board file. Thank you for inviting our participation in the Complaint Committee Conference on March 10, 2021. Please send us a link to the recording of that conference about this matter. Thank you.

We have reviewed the revised stipulation and order that the Complaint Committee issued after that conference. We are disappointed to see the Board pursuing this matter in light of the unique facts here. This matter could be closed with no action taken and the matter would not be part of the public record and have no precedential value.

If the matter must proceed to stipulation and order, then we find that the stipulation in its current form does not tell the whole story, and therefore is inaccurate and unduly harmful to Mr. Marohn. We appreciate the changes the Board has made to date, but the Board continues to find that Mr. Marohn engaged in misrepresentation and made false and untruthful statements, all of which required his *intent to deceive*, which is completely missing here.

Mr. Marohn has not been a practicing engineer since 2012. He does not sign documents, practice engineering, oversee anyone who practices engineering, work on any engineering projects, or create any threat to the health, safety, and welfare of the public. He does not apply for any work as an engineer, use his credentials to seek work as a professional engineer, or represent himself as an engineer (except for the errant use of his PE in his bio while lapsed).

275 MARKET STREET, SUITE 566, MINNEAPOLIS, MN 55405

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Given that background, he honestly did not consider himself to be “practicing engineering” or in any way “holding out” as a licensee during his period of lapsed license. Mr. Marohn’s mindset is critical to the Board’s analysis, as he would have had to have known he was telling a lie when he completed his renewal application in order to have made the knowingly false statements that the Board is accusing him of committing. That did not happen here. For the same reasons, his conduct lacks the willfulness required for the Board to have the authority to issue discipline under Minn. Stat. 14.045, subd. 3.

Without factual or legal authority, the Board is at risk of acting in an arbitrary and capricious manner by enforcing the rules against Mr. Marohn here. As we have argued in our earlier submissions, the Board has demonstrated its ability in other cases to recognize conduct that was based on an innocent and human mistake, and not impose findings and sanctions based on misrepresentation. We ask no less here.

Again, if the Board is willing to reconsider and close the matter with no action taken, that would be our sincere request. If that is not possible, then in the spirit of trying to resolve the matter now, Mr. Marohn would be willing to consent to a stipulation and order that was modified as follows:

- Under Part 2. Facts:
 - Add the following text to the end of the current sentence at subpart c:
“without objection from the Board.”
 - Delete current subpart d and replace with the following text:
“On July 24, 2020, the Board sent notification of the complaint to the Respondent.”
 - Add the following text as subpart e:
“On July 28, 2020, the Respondent responded to the Board, acknowledging an inadvertent lapse in licensing, providing evidence that the lapse was addressed and corrected the same day when discovered, and testifying that, beyond referencing licensure in his biography, Respondent has not engaged in the practice of engineering during the lapsed period.”
- Part 3. Violations: Delete current paragraph and replace with the following text:
“Respondent admits that the facts specified above demonstrate that he used the terms “professional engineer” and “PE” without a current license, in violation of Minn. Stat. 326.02, subs. 1 and 3 (2020).”
- Part 4: Delete subpart c (requiring two ethics hours)

If the Board will make these changes, Mr. Marohn will sign the stipulation.

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If the Board will not agree to these terms, then we request your direction for next steps. We are not clear from the Board's materials whether we would first need to appear before a closed session of the full Board to request relief, or proceed directly to a contested case hearing before the ALJ as outlined in the Board's overview of the complaint process. "Should the Respondent refuse to agree to the Proposed Order itself and/or to the enforcement actions proposed by the Complaint Committee, * * * the matter may proceed to a contested case hearing initiated under the Administrative Procedures Act. The hearing is held before an Administrative Law Judge (ALJ) and involves the presentation of testimony and submission of exhibits in a manner similar to a civil trial."

As we have noted earlier, we would prefer not to have to challenge the Board's authority and its handling of this matter, but we are prepared to do so if necessary. Mr. Marohn will not consent to any document that says he was untruthful, misrepresented himself or the facts, made false statements, or is in need of ethics training.

I make this one last plea for the Board to reconsider its response to this case so that we can put this matter to rest without a contested case hearing. Thank you for your consideration.

Very truly yours,



Kristine A. Kubes

cc: Charles Marohn (email only)