

November 17, 2020

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

Re: File No. 2020-0043

Dear Ms. Johnson:

I received your letter dated November 3, 2020 along with the proposed *Stipulation and Order*. I am bewildered by the Committee's actions, specifically the serious allegations of fraud and dishonesty and the demand that I submit to a censure to avoid a contested case hearing. Let me be clear: I do not agree to the Committee's findings nor to the proposed course of action.

I am deeply offended by the suggestion that I violated Minnesota Rules 1805.0200. Specifically, subpart 4C, which suggests that I:

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

All these distasteful adjectives suggest a willful act on my part to deceive the Board and the public. It is not possible for you to make that conclusion, especially since I established a clear timeline indicating that, at the moment I became aware that my license had expired, I took immediate actions to rectify the situation. This was weeks before you sent the complaint to me. My actions have been the opposite of dishonesty, fraud, deceit, or misrepresentation. I have conducted myself with the type of forthright action that demonstrates a respect for the Board and the engineering profession.

Further, as I have indicated to you, I do not practice engineering. I do not work for an organization that conducts engineering. I do not have clients or projects. I do not sign plans or prepare specifications or oversee anyone who does. I am a writer, a commentator, and a public speaker. While I respect the Board's need to police the use of the term “professional engineer,” it is clear from my reading of the statutes that the intent of these provisions is to protect the public from people who are misrepresenting themselves in the *practice* of engineering. My inadvertent oversight in allowing my license to temporarily expire seems to be a borderline case, one that a collegial board should find good reason to dismiss out of hand, especially since I took immediate action and the matter has now been rectified.

To the contrary, you have proposed censure, a formal expression of strong disapproval, along with a stiff \$1,500 fine. If I had intentionally misled the Board, or intentionally misled the public, or taken some action that had resulted in the harm of others, this might make some sense. None of that is supported by any of the facts nor was it even alleged in the complaint.

I have reviewed many years of history of *Stipulations and Orders* available on your website and note that censure is reserved for the most egregious cases of non-response and lack of cooperation. Given that my behavior has been responsive and cooperative, I ask you to explain how my actions prompt you to seek to censure me. The punishment you are demanding I submit to is arbitrary and capricious.

Earlier this year, Judge Kimberly Middendorf ruled in the matter of Eirik Magnuson in a contested case hearing. The Board had found that Magnuson referred to himself as a “project architect” despite not having ever been licensed as an architect. Further, Magnuson was found to be actively working in an architecture-related position. This is a far more egregious case than a mere temporary lapse in licensure by someone not currently practicing.

Even so, Judge Middendorf ruled that:

“...in arriving at a penalty amount, the Board must consider the factors listed in Minn. Stat. § 14.045, subd. 3. Consistent with those factors, the Board should consider Respondent's cooperation in the investigation, Respondent's lack of disciplinary history, the lack of evidence of harm to the public, and Respondent's prompt correction of the violation.”

The referenced statute reads as follows:

Subd. 3.Factors. (a) If a statute or rule gives an agency discretion over the amount of a fine, the agency must take the following factors into account in determining the amount of the fine:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation;
- and
- (6) other factors that justice may require.

I have demonstrated that there was no will on my behalf to commit any violation. My lapse in licensure was inadvertent and understandable and, when discovered, immediately corrected.

No damage resulted from my temporary lapse in licensure, nor could it have since I am not actively practicing engineering. I have no history of past violations. My current employer does not require me to hold a license nor compensate me for licensure, so I have experienced no economic benefit from representing myself as an engineer during the period in question.

Given these factors, justice requires that there be no censure, no fine, and no sanction of any type beyond the late fee I already paid.

Finally, I will also note that, in the absence of a complaint, one seemingly filed with prejudice over my personal views and opinions, we would not be having this interaction. The Board was satisfied to accept my renewal last June, along with the added late fee, and reissued my license, despite having already received the complaint against me (but not yet forwarded it to me). The complaint process is an inappropriate venue to litigate what is really a 1st amendment issue. I also believe it is a misuse of the Board's standing.

For the sake of my professional colleagues who may someday find themselves subject to such an inquiry merely for expressing their views and opinions, I cannot submit to the *Stipulation and Order* you have forwarded to me.

At the discretion of the Board, I ask that this complaint be resolved with a finding of no further action warranted. If not, I formally request a hearing with the Complaint Committee or the full Board to review the complaint against me.

I am prepared to work with the Board to resolve this matter in an amicable way. I look forward to your response.

Sincerely,

Charles L. Marohn, Jr. PE
License #40142

Proposed Findings of Fact

File No. 2020-0043

1. Respondent was first issued a license on February 8, 2000. Respondent has renewed this license and remained in good standing, through June 30, 2018.
2. Respondent's license expired on June 30, 2018. Respondent indicated that he believed he did renew his license, but there is no record of that having happened. Respondent indicated that he changed addresses and has not been receiving mail from the Board. There is no indication that there was a willful violation.
3. On June 9, 2020, Respondent was made aware that the Board's website indicated his license had expired. Respondent has provided documentation indicating that this was the first time he was aware that his license had expired. On that day, Respondent immediately submitted the proper paperwork to renew the license, including a late fee.
4. On June 17, 2020 the Board approved the renewal application, including payment of a late fee, from the Respondent and issued a license. Respondent is now licensed through June 30, 2022.
5. Between July 1, 2018 and June 17, 2020, Respondent did not work as a Professional Engineer, did not oversee anyone working as a Professional Engineer, did not sign any documents or have any involvement with any project requiring licensure, and did not solicit any work or represent himself as a Professional Engineer in order to gain employment or practice engineering.
6. On July 24, 2020, the Board notified Respondent of a complaint alleging that the Respondent misrepresented himself as a Professional Engineer. Respondent replied immediately and has subsequently remained responsive to the concerns of the Board.
7. There is no evidence, testimony, or allegation that the Respondent's gap in licensure resulted in any damage to humans, animals, or the natural resources of the state.
8. The Respondent has no history of past violations and has been responsive and cooperative in promptly resolving this matter.
9. The Respondent's current employment does not require licensure and the Respondent is not compensated for having licensure. Respondent did not accrue any economic benefit from licensure during the gap in licensing.

Given these facts, and in the interest of justice, the Board finds that this matter warrants no additional action.