

## THE CODE OF ETHICS AND THE LAW

The Engineer, Land Surveyor and Geologist Registration Law (Act 367) includes under Section 4 (g) a “Code of Ethics” for engineers, land surveyors and geologists practicing in the Commonwealth. Section 4 (g) entitled, “Suspension and Revocation of Licenses; Registrations and Certificates; Reinstatements”, specifically empowers the Board to discipline any registrant guilty of misconduct in the practice of these professions. A violation of the Code of Ethics will be considered by the Board as misconduct in the practice of these professions.

The “Code of Ethics” as printed in Section 4 (g) of the ACT is as follows:

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

(1) To act for his client or employer in professional matters otherwise 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.

If you have facts substantiating unethical practice by a licensed professional under this act, please file a complaint with the Bureau of Professional and Occupational Affairs by calling the toll free number 1-800-822-2113 if you reside in Pennsylvania or 717-783-4849 outside Pennsylvania.

The Board urges you to study the “Code of Ethics” and embrace it in the daily practice of your profession.

REMEMBER, IT’S THE LAW!

### **David Widmer NCEES President-Elect**

David Widmer, P.L.S., began his term as 2014–15 NCEES president at the conclusion of the organization’s annual meeting, held August 20–23 in Seattle, Washington.

A resident of Rochester, Pennsylvania, Widmer was a member of the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors, and Geologists from 1991 to 2011 and is now an emeritus member. He previously served as NCEES treasurer and Northeast Zone vice president. David has been a licensed professional surveyor in Pennsylvania for more than 28 years. He is the president of consulting firm Widmer Engineering Inc., based in Beaver Falls, Pennsylvania. He is a graduate of Geneva College in Beaver Falls. David has served as Southwest Chapter director and state director of the Pennsylvania Society of Land Surveyors, director of the Beaver County Chapter of the Pennsylvania Society of Professional Engineers, and president of the Western Chapter of the American Council of Engineering Companies of Pennsylvania. He is a member of the Southwestern Pennsylvania Corporation Loan Advisory Committee and a former member of the board of directors for the Beaver County Association for the Blind and the advisory board for the Beaver Salvation Army.

The State Registration Board for Professional Engineers, Land Surveyors and Geologists would like to extend our congratulations to David on this achievement and offer our support in future endeavors. It is gratifying to know that NCEES has chosen a proven leader!

### **Board Collection of Civil Penalties and Costs**

The Engineer, Land Surveyor and Geologist Registration Law authorize the State Board to take disciplinary action against a licensee who has committed any of certain actions specified

in this practice act. In addition to suspending or revoking the licensee's license, disciplinary action may include levying a civil penalty of up to \$10,000 per violation. The Board is one of 29 professional licensing boards within the Bureau of Professional and Occupational Affairs (BPOA) of the Department of State. Act 48 of 1993 has long provided that a civil penalty imposed by a BPOA board is a judgment in favor of BPOA against the respondent licensee or his property and that the Office of Attorney General (OAG) may enforce such a judgment in the courts of common pleas. Whenever a licensee failed to pay a previously-imposed civil penalty, a BPOA board would suspend the licensee's license until the civil penalty has been paid. The board would also refer the matter to the OAG for collection.

By Act 6 of 2014, the General Assembly provided BPOA with greater tools to enforce its boards' civil penalties. BPOA boards have clear statutory authority to deny, suspend or revoke a license, registration or certification or permit for failure to pay any penalty, fee, interest or cost assessed as a result of a disciplinary proceeding before the board. Act 6 also provides that the judgment is against any property of the licensee, whether personal property or real property and whether already owned or later acquired.

Act 6 set up a procedure to enforce these judgments. Within 60 months of the final disposition of a matter where unpaid civil penalties and costs total \$1,000 or more, a BPOA board or its agent may transmit a copy of the final disposition to the Prothonotary of the court of common pleas in the county where the licensee or property is located. The Prothonotary is to enter judgment without requiring payment of any costs for the total amount as judgment upon the licensee whether or not installment payment is permitted. This lien will maintain its priority indefinitely, as contrasted with other liens that must be revived every five years. Unlike other matters, no preliminary proceedings are required to proceed to a sheriff's sale, except for appropriate notice to the licensee. Within 90 days of payment in full, the BPOA board is required to notify the Prothonotary and request that the judgment be noted as satisfied in full.

Not only does imposition of a civil penalty and assessment of costs (or the risk of such action) deter licensees from violating the practice act and board regulations, but collection of such monies shifts more of the cost of policing the professions to those licensees who violate the law. Thanks to Act 6, BPOA boards now have greater teeth in enforcing collection of unpaid civil penalties and costs.

## **Professional Geologist Education Requirements Refined**

Final Rulemaking, which includes revised educational pre-requisites for licensing professional geologists was published in the February 15<sup>th</sup> 2014 Pennsylvania Bulletin. The Board's regulations have narrowed the previous requirement that candidates possess a qualifying degree in *geology, geophysics, geochemistry or engineering geology* by specifying that candidates' curricula must include completion of courses in Structural Geology and Field Methods.

The new regulation applies to all candidates, including those following the traditional route of sitting for both the Fundamentals and Practices portions of the ASBOG licensure examination simultaneously after achieving the five-year experience threshold, as well as those candidates

who wish to sit for the FG examination at the conclusion of their education to obtain a Geologist-in-Training Certificate, followed by the PG examination after the pre-requisite experience is complete. Although the rules provide for university students to take the Fundamentals portion of the examination following successful completion of their second year, with Board approval, such approval cannot be presumed because structural geology and field methods, both needed to sit for the G.I.T. exam, are typically third and/or fourth year courses in most geology departments, although in some cases they might be completed by the end of the second year. A G.I.T. Certificate can only be issued following successful graduation and passing of the ASBOG FG examination.

### **Board Begins Work on Regulations on Seals and Electronic Seals**

At a recent meeting, the Board approved a proposed regulation on seals. There are two basic purposes for this proposed regulation. First, the Board will update its current regulations on traditional metal embossing and rubber stamp seals to make them as consistent as possible with the two other design professional boards that license architects and landscape architects. Second, the Board is also proposing this new regulation (in conjunction with the two other design professional boards) to allow (but not require) its licensees to use electronic seals that contain security protections. The regulation allows licensees to continue using their current seals.

Use of electronic seals will increase electronic commerce and electronic communications, increase electronic filing of documents, help establish uniformity of rules and standards regarding the authentication and integrity of electronic records and promote public confidence in the integrity and reliability of electronic records. The requirements in these regulations for detecting alterations in documents sealed electronically will minimize the incidence of forged electronic records and reduce fraud in electronic commerce. As more documents are created using electronic seals and signatures, the design professionals and their clients will save time, money and paper by converting their work product to an electronic format, which is beneficial for the environment as well as a firm's bottom line.

This proposed regulation is at the very beginning of Pennsylvania's thorough regulatory process. Licensees, other interested parties and the public may comment on this regulation when it is later published in the *Pennsylvania Bulletin*. The Board will consider all comments received in developing its final rulemaking. The Board will place a notice on the Board's website when the regulation is published as proposed in the *Pennsylvania Bulletin* and again later when the regulation is published as final in the *Pennsylvania Bulletin*, when it will then have the force and effect of law.

### **Disciplinary Actions**

The link below will direct you to a listing of disciplinary or corrective measures taken by the 29 professional licensing boards and commissions, Charitable Organizations and Notaries Public. Each entry includes the name of the respondent; the respondent's license number (if any); the respondent's last known business address with the board; the sanction imposed; a brief description of the basis for the disciplinary or corrective measure; the effective date; and whether

the action has been appealed. Every effort has been made to ensure that the information is correct. However, it should be noted that the names of persons listed may be similar to the names of persons who have not had disciplinary or corrective measures taken against them. Official confirmation of the current status of a licensee can be obtained by contacting the Bureau of Professional and Occupational Affairs: 2601 North 3rd Street, Harrisburg, PA 17110; (717) 787-8503.

<http://www.dos.pa.gov/ProfessionalLicensing/VerifyaProfessional/DisciplinaryActions/Pages/default.aspx#.VNUqG1Y04qI>

### **Continuing Education is Important!**

The State Registration Board for Professional Engineers, Land Surveyors and Geologists ("Board") has the duty and authority to suspend, revoke or otherwise discipline under the Engineer, Land Surveyor and Geologist Registration Law (Section 4(g)), which is the professional licensing Law (63 P.S. §§148 *et seq.*). Although there are a variety of professional situations for which the Board may take formal action, one such circumstance is the failure of a licensee to timely complete acceptable continuing education or Professional Development Hours ("PDH") as outlined in the Law at Section 4.5 (Continuing Professional Competency Requirements, 63 P.S. §151.5) and Board regulations at Section 37.111, 49 Pa. Code §37.111). Section 4.5(b) of the Law, 63 P.S. §151.5(b), specifically provides for PDH-CPC as a condition of licensure.

The purpose of continuing education is to maintain, improve or expand skills and knowledge of licensees obtained prior to initial licensure, and is necessary to develop new and relevant skills and knowledge applicable to the profession. It is imperative that acceptable PDH-CPC be timely completed in order to safeguard life, health or property and to promote the general welfare of consumers of professional services.

A licensee may be subject to disciplinary action if an overall total of acceptable PDH is not completed in the biennial reporting period. That is, a licensee may be censured or reprimanded, or be required to complete continuing education hours or to undergo other remedial action, or to having the current professional certificate and license revoked, suspended or otherwise restricted, for failure to comply with the Board's statutory and regulatory Laws. Under Section 11, 63 P.S. §158, a violating licensee is subject to being assessed a civil penalty in accord with the Act 48 schedule of civil penalties (49 Pa. Code §43b.13a.), and further, as part of any disciplinary sanction, to pay the costs of investigation in the matter. (*see* Section 5(b) of the Act of July 2, 1993 (P.L. 345, No. 48), 63 P.S. §2205(b)). In determining a sanction, the Board weighs the seriousness of the violation and any mitigating facts.

Completion of continuing education is required to maintain competence to practice the credentialed profession in our Commonwealth. A licensee who fails to recognize, at the time of application to renew or reactivate licensure, a deficiency in obtaining the necessary PDH-CPC may result in being issued a license for a period for which a licensee is not eligible. The Board considers it essential that any licensee cure the continuing education deficiency and also the Board considers it appropriate to assess a civil penalty as a means of impressing upon a licensee and other credentialed professionals the importance of strictly adhering to the PDH-CPC requirements that are a condition of maintaining current licensure in the Commonwealth of Pennsylvania.

The maintenance of a current license is the most basic requirement under the Registration Law to engage in professional practice, and it is the responsibility and duty of our professional licensees to follow our statutory and regulatory Laws for the protection of our citizen consumers.

### Reciprocity Licensure

The Board may license by reciprocity a licensee of good moral character and repute who speaks and writes the English language and holds a current license in another state or territory of the United States or a foreign country whose requirements for licensure at the time of the initial issuance of the license were at least equal to the existing standards in Pennsylvania, provided that the other jurisdiction would similarly license professional land surveyors licensed in Pennsylvania. Section 4(b)(1) of the Engineer, Land Surveyor and Geologist Registration Law (Law), 63 P.S. §151(b)(1). An applicant for licensure by reciprocity as a: professional engineer must have taken and passed the Fundamentals of Engineering Examination, the Principles and Practice of Engineering Examination, and must have four years of progressive engineering experience (Section 4.2 of the Law, 63 P.S. §151.2; *see* Board regulation at Section 37.31, 49 Pa. Code §37.31); professional land surveyor must have taken and passed the Fundamentals of Land Surveying Examination, must have four years of progressive surveying experience, and must take and pass the Pennsylvania state specific Principles and Practice of Land Surveying Examination (Section 4.3 of the Law, 63 P.S. §151.3; *see* Board regulation at Section 37.47, 49 Pa. Code §37.47); and, professional geologist must have taken and passed the Fundamentals of Geology Examination, the Principles and Practice of Geology Examination, and must have five years of geological work experience (Section 4.4 of the Law, 63 P.S. §151.3; *see* Board regulation at Section 37.36, 49 Pa. Code §37.36).

Although the Law does not particularly reference ‘reciprocity’, the theory for reciprocal licensure is based upon “comity”, which is a courtesy among political entities such as states and courts of different jurisdictions providing mutual recognition of legislative, executive and judicial acts, as defined by *Black’s Law Dictionary, 7<sup>th</sup> Edition*. The application of the “Full Faith and Credit Clause” may be and is the familiar name used to refer to [Article IV](#), Section 1 of our [United States Constitution](#), which addresses the duties that [states](#) within the [United States](#) have to respect the "public acts, records, and judicial proceedings of every other state", via comity; and notwithstanding, the “Privileges and Immunities Clause”, [Article IV](#), Section 2, Clause 1, of our United States Constitution provides that a [state](#) may not treat citizens of other

states in a discriminatory manner unless such treatment is of paramount importance to protect public interests. *See* Section 3(a) of the Law, 63 P.S. §150(a) (in order to safeguard life, health or property and to promote the general welfare, it is unlawful for any person to practice or offer to practice in Pennsylvania unless licensed by the State Registration Board for Professional Engineers, Land Surveyors and Geologists).

The Supreme Court of Pennsylvania has consistently interpreted that Article I, Section 1, of the Pennsylvania Constitution, in light of Full Faith and Credit, and Privileges and Immunities, guarantees that an individual has a privilege and a “right to engage in any of the common occupations of life.” *Hunter v. Port Authority of Allegheny County*, 419 A.2d 631 (Pa. Super. 1980), citing *Adler v. Montefiore Hosp. Ass’n of Western Pennsylvania*, 453 Pa. 60, 311 A.2d 634 (1973), *certiorari denied*; *State Board of Pharmacy v. Pastor*, 441 Pa. 186, 272 A.2d 487 (1971); and *Gambone v. Commonwealth*, 375 Pa. 547, 101 A.2d 634 (1954). *See* Pa. Const. Art. I, §1. However, the Commonwealth Court, in licensing matters, has long recognized that the state has the right to license professions, *Allen v. State Board of Accountancy*, 595 A.2d 771, 773 (Pa. Cmwlt. 1991), citing *Keeley v. State Real Estate Commission*, 501 A.2d 1155 (Pa. Cmwlt. 1985), and the right to engage in a profession is “subject to the lawful exercise of the state’s police power to protect the health, safety, welfare and morals by promulgating statutes which reasonably regulate occupations”. *Pennsylvania Medical Society v. Foster*, 608 A.2d 633, 637 (Pa. Cmwlt. 1992). Consequently, individual opportunity to engage in a licensed occupation is subject to the Board granting such license to so engage as promulgated and authorized in enabling legislation, or the Law.

An applicant for licensure by reciprocity has the burden to demonstrate that he or she meets all of the qualifications necessary for obtaining a license to practice an occupation or profession. *Barran v. State Board of Medicine*, 670 A.2d 765 (Pa. Cmwlt. 1996). It is the responsibility of the State Registration Board for Professional Engineers, Land Surveyors and Geologists to assure that only those applicants who meet the qualifications set forth in the Law become licensed in the Commonwealth of Pennsylvania. *Quinn v Bureau of Professional and Occupational Affairs*, 650 A.2d 1182, 1185 (Pa. Cmwlt. 1994), *petition for allowance of appeal denied*, 541 Pa. 646, 663 A.2d 697 (1995).

### **Board Members**

Michael Brinkash, P.L.S. – President

Elizabeth (Lisa) Catania, P.E.

Robert Ford, P.E.

Robert Garlitz, P.L.S.

Thomas Gillespie, P.G.

Vacant (Public Member)

Vacant (Public Member)  
David Pennoni, P.E.  
Hiram Ribblett, P.E.  
Carol Sides, Public Member  
James Szalankiewicz, P.E., P.L.S.  
Theodore Tesler, P.G. – Vice President

**2015 Board Meeting Dates:**

January 14  
March 11  
May 13  
July 8  
September 9  
November 18

Meeting location:

One Penn Center  
2601 North 3rd Street  
Harrisburg, PA 17110  
needed

Meetings commence at 9:30 a.m.

Public Welcome

other board meetings may be scheduled as