BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:	)	
	)	
RALPH L. WAGNER	)	Case No. 826-A
P. O. Box 13	)	
Lake Arrowhead, CA 92352	)	
	)	
Civil Engineer License No. C 10900,	)	
	)	
Respondent.	)	
	)	

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on September 10, 2010.

IT IS SO ORDERED August 11, 2010.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
Department of Consumer Affairs
State of California

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
MICHAEL A. CACCIOTTI
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Attorneys for Complainant

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **RALPH L. WAGNER** **PO Box 13** **Lake Arrowhead, CA 92352** **Civil Engineer License No. C 10900** Respondent.	Case No. 826-A OAH No. L-2009101449 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional Engineers and Land Surveyors. He brought this action solely in his official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Michael A. Cacciotti, Deputy Attorney General.

2. Ralph L. Wagner (Respondent) is represented in this proceeding by attorney Michael R. Shaefer, whose address is Michael R. Shaefer Law Offices of Fullerton, Lemann, Schaefer & Dominick, LLP 215 North D Street, First Floor San Bernardino, CA 92401-1712.2. On or about November 1, 1957, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C 10900 to Respondent. The License was in full force and effect at all

times relevant to the charges brought in Accusation No. 826-A and will expire on December 31, 2010, unless renewed.

JURISDICTION

3. Accusation No. 826-A was filed before the Board for Professional Engineers and Land Surveyors (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 22, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 826-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 826-A. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

5. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

7. Respondent understands that the charges and allegations in Accusation No. 826-A, if proven at a hearing, constitute cause for imposing discipline upon his Civil Engineer License.

8. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Civil Engineer License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board for Professional Engineers and Land Surveyors. Respondent understands and agrees that counsel for Complainant and the staff of the Board for Professional Engineers and Land Surveyors may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. Respondent has requested that the effective date of the Board's Decision and Order be 60 days after adoption by the Board to permit him to complete his current contractual obligations related to his Engineering business. The parties agree that the Board's Decision and Order shall become effective 60 days after its adoption by the Board.

13 This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order

may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 10900, issued to Respondent Ralph L. Wagner is surrendered and accepted by the Board for Professional Engineers and Land Surveyors.

15. The surrender of Respondent's Civil Engineer License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

16. Respondent shall lose all rights and privileges as a civil engineer in California as of the effective date of the Board's Decision and Order. The Board's Decision and Order shall become effective 60 days after its adoption by the Board.

17. Respondent shall cause to be delivered to the Board both his wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

18. Respondent agrees not to petition for reinstatement of the surrendered license. Respondent agrees not to apply for any license issued by the Board for three years from the effective date of this surrender. Respondent understands and agrees that if he ever applies for any license issued by the Board, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application is filed, including but not limited to submitting a completed application and the requisite fee and taking and passing the required examination(s), and all of the charges and allegations contained in the Accusation shall be deemed to be true, correct and admitted by Respondent when the licensing agency determines whether to grant or deny the application.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Michael R. Shaefer. I understand the stipulation and the effect it will have on my Civil Engineer License No. C 10900. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers and Land Surveyors.

DATED: 14 May 2010

Original Signed

RALPH L. WAGNER
Respondent

I have read and fully discussed with Respondent Ralph L. Wagner the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: May 14 2010

Original Signed

MICHAEL R. SHAEFER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board for Professional Engineers and Land Surveyors of the Department of Consumer Affairs.

Dated: May 12, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

Original Signed

MICHAEL A. CACCIOTTI
Deputy Attorney General
Attorneys for Complainant

LA2008601391
Stipulation.rtf

Exhibit A

Accusation No. 826-A

EDMUND G. BROWN JR., Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RALPH L. WAGNER PO Box 13 Lake Arrowhead, CA 92352 Civil Engineer License No. C 10900 Respondent.	Case No. 826-A **ACCUSATION**

Complainant alleges:

PARTIES

1. Cindi Christenson, P.E. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs.

2. On or about November 1, 1957, the Board for Professional Engineers and Land Surveyors (Board) issued Civil Engineer License Number C 10900 to Ralph L. Wagner (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 6735, subdivision (a), states, in pertinent part:

"All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as 'documents') shall be prepared by, or under the responsible charge of, a registered civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as 'preliminary,' 'not for construction,' 'for plan check only,' or 'for review only.' . . ."

6. Section 6749, subdivision (a), states, in pertinent part:

"A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

. . . .

(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

7. Section 6775 states, in pertinent part:

"[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

. . . .

"(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

. . . .

"(f) Who aids or abets any person in the violation of any provision of this chapter.

. . . .

"(h) Who violates any provision of this chapter."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 404.1, subdivision (a) states:

"(a) As used in the Professional Engineers Act, the term "responsible charge" directly relates to the extent of control a professional engineer is required to maintain while exercising independent control and direction of professional engineering services or creative work and to the engineering decisions which can be made only by a professional engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the engineer:

(A) Makes or reviews and approves the engineering decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the engineering decisions, determines the applicability of design criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Engineering Decisions. The term "responsible charge" relates to engineering decisions within the purview of the Professional Engineers Act. Engineering decisions which must be made by and are the responsibility of the engineer in responsible charge are those decisions concerning permanent or temporary projects which could create a hazard to life, health, property, or public

welfare, and may include, but are not limited to:

(A) The selection of engineering alternatives to be investigated and the comparison of alternatives for the project.

(B) The selection or development of design standards or methods, and materials to be used.

(C) The decisions related to the preparation of engineering plans, specifications, calculations, reports, and other documents for the engineered works.

(D) The selection or development of techniques or methods of testing to be used in evaluating materials or completed projects, either new or existing.

(E) The review and evaluation of manufacturing, fabrication, or construction methods or controls to be used and the evaluation of test results, materials, and workmanship insofar as they affect the character and integrity of the completed project.

(F) The development and control of operating and maintenance procedures.

(3) Reviewing and Approving Engineering Decisions. In making or reviewing and approving engineering decisions, the engineer shall be physically present or shall review and approve through the use of communication devices the engineering decisions prior to their implementation."

COST RECOVERY

9. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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BOARD COMPLAINT AND INVESTIGATIVE REPORT NO. 2006-12-517

10. On December 12, 2006, the Board received a complaint from homeowners Donald and Joyce R. (the homeowners), of Crestline, California. This complaint, the related investigation, and eventual investigative report, were assigned No. 2006-12-517 by the Board. The homeowners alleged that sometime in 2006, they contracted with James Hess (Mr. Hess), president of JHAS, Inc. (JHAS), after finding JHAS listed under Engineering in the Yellow Pages telephone directory. Based on the Yellow Pages listing, the homeowners believed that they were contracting with a company that employed a licensed engineer. Although Respondent was the only engineer affiliated with JHAS, the homeowners allege that in November 2006, they spoke with Respondent and Respondent knew nothing of the project. Respondent claimed that he had reviewed the drawings in the capacity of a sub-consultant. Regarding the work, the homeowners complained about a wall of the house "sliding," and the kitchen floor bulging. They further complained about JHAS's failure to timely submit home renovation plans to the appropriate office in the county where the homeowners resided.

11. On or about February 21, 2007, Board Enforcement Analyst Margie Freeman transmitted this case to independent technical expert Richard Jones, Professional Civil Engineer (Mr. Jones), for his expert opinion. Mr. Jones opined that Respondent had violated provisions of the Code by failing to execute a signed, written contract for the engineering services provided to the homeowners, failing to be responsibly in charge of the project, and departing from the standard of care that would be exercised by a reasonably prudent professional engineer.

FIRST CAUSE FOR DISCIPLINE

(Negligence and/or Incompetence in the Practice of Professional Engineering)

12. Respondent is subject to disciplinary action under section 6775, subdivision (c), for committing acts that amounted to negligence and/or incompetence in the practice of professional engineering. The acts amounting to negligence and/or incompetence include Respondent's failure to be knowledgeable about the business practice of JHAS, and failing to supervise adequately the work of Mr. Hess, which resulted in incomplete seismic

criteria, incomplete retaining wall calculations, failing to provide a soils report, and plans that not only failed to address shoring, but were generally sloppy and inconsistent.

SECOND CAUSE FOR DISCIPLINE

(Violating Requirements of the Business and Professions Code)

13. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6735, and California Code of Regulations, title 16, section 404.1, for failing to exercise responsible charge over Mr. Hess, Respondent's unlicensed colleague, and the plans that were prepared by Mr. Hess and presented to the homeowners. Complainant references and incorporates all the allegations contained in paragraphs 10 through 12, as though set forth fully.

14. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6749, for failing to execute a written contract covering the engineering services provided to the homeowners. Complainant references and incorporates all the allegations contained in paragraph 11, as though set forth fully.

15. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6749, subdivision (a)(3), for failing to include the address of the professional engineer, and the name and address of the client, in a contract. Complainant references and incorporates all the allegations contained in paragraph 11, as though set forth fully.

16. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6749, subdivision (a)(4), for failing to include a contractual description of the procedure that the professional engineer and the client would use to accommodate additional services. Complainant references and incorporates all the allegations contained in paragraphs 10-12, as though set forth fully.

17. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6749, subdivision (a)(4), for failing to include a contractual description of the procedure that the professional engineer and the client would use to accommodate additional services. Complainant references and incorporates all the allegations

contained in paragraphs 10-12, as though set forth fully.

18. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6749, subdivision (a)(5), for failing to include a contractual description of the procedure to be used by any party to terminate the contract. Complainant references and incorporates all the allegations contained in paragraphs 10-12, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Another)

19. Respondent is subject to disciplinary action under section 6775, subdivision (f), for aiding and abetting Mr. Hess in the unlicensed practice of professional engineering. Complainant references and incorporates all the allegations contained in paragraphs 10-12, as though set forth fully.

BOARD COMPLAINT AND INVESTIGATIVE REPORT NO. 2006-12-517

20. On or about April 14, 2004, the Board received a complaint from David W. Larson (Mr. Larson) of CCL Engineering, dated April 9, 2004. This complaint, the related investigation, and eventual investigative report, were assigned No. 2004-04-115 by the Board. The complaint contained allegations related to two different projects: (1) a project known as the "Shoreline Retaining Wall at North Shore Marina"; and (2) a project related to a retaining wall at a daycare center in Lake Arrowhead, California (the daycare center project). On or about May 19, 2005, Board Enforcement Analyst transmitted the case to independent Technical Expert Michael Laney, Professional Civil and Geotechnical Engineer (Mr. Laney), for his expert opinion. Mr. Laney opined that there were deficiencies in the Shoreline Retaining Wall design, and that Respondent had demonstrated a serious lack of understanding about the retaining wall design.

21. Regarding the daycare center project, Respondent represented in a letter dated September 26, 2004, that the plans were only preliminary plans. However, the plans were not marked as preliminary. Respondent had also failed to obtain a soil sample, which was necessary to select the proper soil type from the Uniform Building Code, from a geotechnical

standpoint, and he had further failed to demonstrate that the wall was designed to resist sliding. Additionally, the plans contained a drawing error, which Respondent admitted and offered to correct.

22. On or about June 13, 2005, in a report dated June 9, 2005, Mr. Laney suggested that the complaint also be reviewed by a structural engineer, in order to get an opinion related to the structural design of the Shoreline Retaining Wall. In response to that suggestion, on or about June 16, 2005, Board Enforcement Analyst Tiffany Criswell transmitted the case to independent Technical Expert David Adams, Professional Civil and Structural Engineer, for the purpose of reviewing the structural aspects of the Shoreline Retaining Wall project and the daycare center project. Like Mr. Laney, Mr. Adams noted Respondent's failure to note the preliminary nature of Respondent's plans and calculations. Mr. Adams noted structural design deficiencies regarding both projects, and errors and omissions that included lack of appropriate investigation and incorrect structural calculations regarding soil bearing pressure, improper safety factors against sliding, and the placement of reinforcing bars. Mr. Adams expressed the opinion that the designs were inadequate enough that they could potentially result in substantial monetary loss and/or bodily injury.

FOURTH CAUSE FOR DISCIPLINE

(Negligence and/or Incompetence in the Practice of Professional Engineering)

23. Respondent is subject to disciplinary action under section 6775, subdivision (c), for committing acts that amounted to negligence and/or incompetence in the practice of professional engineering. Complainant references and incorporates all the allegations contained in paragraphs 20-22, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Violating Requirements of the Business and Professions Code)

24. Respondent is subject to disciplinary action under section 6775, subdivision (h), in conjunction with section 6735, subdivision (a), as a result of Respondent's failure to mark preliminary plans with a corresponding written designation as "preliminary," or similar-meaning designation. Complainant refers to and incorporates all the allegations

contained in paragraph 21, as though set forth fully.

DISCIPLINARY CONSIDERATIONS

25. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about November 18, 1996, in a prior disciplinary action entitled In the Matter of the Accusation Against Ralph L. Wagner, before the Board for Professional Engineers and Land Surveyors, in Case No. 563-A, the Board adopted a Stipulation in Settlement of Accusation (Stipulation). The Stipulation contained Respondent's admission that he had committed negligence in the practice of engineering, and provided for a stayed suspension of 180 days, three years probation, and actual suspension of 30 days, along with other terms and conditions. Respondent's license was fully restored after successful completion of the probationary period. The decision in Case No. 563-A is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Civil Engineer License Number C 10900, issued to Respondent;

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 1/20/09

Original Signed

CINDI CHRISTENSON, P.E.
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

draft accusation.wpd