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

In the Matter of the Accusation and Petition to Revoke Probation Against: **LAWRENCE WILLIAM SPEIGHT** **SP8 Engineers & Land Surveyors** **P.O. Box 4141** **Wofford Heights, CA 93285-4141** **Civil Engineer License No. C 32215** Respondent.	Case No. 1094-A **FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Richard B. Moore, PLS ("Complainant") brings this First Amended Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs.

2. On or about August 14, 1980, the Board for Professional Engineers, Land Surveyors, and Geologists ("Board") issued Civil Engineer License Number C 32215 to Lawrence William Speight ("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, 2016, unless renewed.

3. In a disciplinary action entitled "*In the Matter of the Accusation against Lawrence William Speight*," Case No. 785-A, the Board issued a Decision and Order effective December 15,

2006 in which Respondent's Civil Engineer License was revoked. However the revocation was stayed and Respondent's Civil Engineer License was placed on probation for four years, with certain terms and conditions.

4. In a disciplinary action entitled "*In the Matter of the Petition to Revoke Probation against Lawrence William Speight*," Case No. 785-A, the Board issued a Decision and Order ("Decision") effective January 11, 2013, in which Respondent's Civil Engineer License was revoked. However, the revocation was stayed and Respondent's Civil Engineer License was again placed on probation for another four years, with certain terms and conditions. A copy of the Decision is attached as Exhibit A and is incorporated by reference.

FIRST AMENDED ACCUSATION

JURISDICTION

5. This First Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

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

STATUTORY AND REGULATORY PROVISIONS

7. Section 8759 of the Code states, in pertinent part:

"(a) A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her representative, prior to the licensed land surveyor or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. . . . ."

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8. Section 8761 of the Code states:

"(a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice.

"(b) All maps, plats, reports, descriptions, or other land surveying documents shall be prepared by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license number."

"(c) Interim maps, plats, reports, descriptions, or other land surveying documents shall include a notation as to the intended purpose of the map, plat, report, description, or other document, such as "preliminary" or "for examination only."

"(d) All final maps, plats, reports, descriptions, or other land surveying documents issued by a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If the land surveying document has multiple pages or sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet, unless otherwise required by law.

"(e) It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other land surveying document unless the person is authorized to practice land surveying.

"(f) It is unlawful for any person to stamp or seal any map, plat, report, description, or other land surveying document with the seal or stamp after the certificate of the licensee that is named on the seal or stamp has expired or has been suspended or revoked, unless the certificate has been renewed or reissued."

9. Section 8762 of the Code states, in pertinent part:

"(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

. . . .

"(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first."

. . . .

10. Section 8780 of the Code states, in pertinent part:

"Section 8780 of the Code states:

"The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any land surveyor licensed under this chapter or any civil engineer licensed under the provisions of Chapter 7 (commencing with Section 6700) who is legally authorized to practice land surveying and make findings thereon.

"By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any land surveyor licensed under this chapter or civil engineer licensed under the provisions of Chapter 7 (commencing with Section 6700) who is legally authorized to practice land surveying on any of the following grounds:

. . . .

"(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

. . . .

"(f) Aiding or abetting any person in the violation of any provision of this chapter or any regulation adopted by the board pursuant to this chapter."

. . . .

11. California Code of Regulations, title 16, section 404.2 states:

"(a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as "legally authorized civil engineer") is required to maintain while exercising independent control and direction of land surveying work or services and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.

"(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:

"(A) Makes or review and approves the land surveying decisions defined

and described in subdivision (a)(2) below.

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

"(2) Land Surveying Decisions. The term 'responsible charge' relates to land surveying decisions within the purview of the Professional Land Surveyors' Act.

"Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

"(A) Selecting the methods, procedures, and tolerances of field work.

"(B) Determining calculation and adjustment methods.

"(C) Determining and specifying the information to be shown on maps or documents furnished in connection with land surveying services, including the format of the information and the format of the maps or documents.

"(D) The decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection with the land surveying services.

"(E) Reviewing the sufficiency and accuracy of the work product.

"(3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be physically present or shall review and approve through the use of communication devices the land surveying decisions prior to their implementation.

"(b) Responsible Charge Criteria. In order to evaluate whether a person authorized to practice land surveying is in responsible charge, the following must be considered: The land surveyor or legally authorized civil engineer who signs surveying documents must be capable of answering questions asked by licensees of the Board who are fully competent and proficient by education and experience in the field or fields of professional land surveying relevant to the project. These questions would be relevant to the decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the land surveyor's or legally authorized civil engineer's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversarial situation, but only to demonstrate that the individual in responsible charge made, or reviewed and approved, them and possessed sufficient knowledge of the project to make, or review and approve, them.

"Examples of questions to be answered by the land surveyor or legally authorized civil engineer could relate to criteria for measurement, surveying methods, analysis, and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deed descriptions, conflicts between construction drawings and actual conditions, determination of the proper control

datum and epoch, application of proportion methods, and analysis of evidence related to written and unwritten property rights. The individual shall be able to clearly express the extent of control and how it is exercised and to demonstrate that the land surveyor or legally authorized civil engineer is answerable within said extent of control.

"(c) Successor Licensee. In situations when the professional land surveyor or legally authorized civil engineer in responsible charge of a land surveying project is unavailable to complete the project, a professional land surveyor or legally authorized civil engineer (hereinafter referred to as the "successor licensee") may assume responsible charge of the project as long as the successor licensee exercises the extent of control and assumes responsibility for the surveying decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Land Surveyors' Act and Sections 411 and 415. Except as provided in Section 8761.2 of the Code, the original licensee is not relieved of any responsibility arising from the land surveying services of which he or she was in responsible charge.

"(d) Portions of Projects. Nothing in this section prohibits a professional land surveyor or legally authorized civil engineer from providing services for portions of or to add to or to modify a land surveying project performed under the responsible charge of another licensee as long as the professional land surveyor or legally authorized civil engineer exercises the requisite extent of control and assumes responsibility for the land surveying decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Land Surveyors' Act and Sections 411 and 415. The professional land surveyor or legally authorized civil engineer need only be in responsible charge of the portions, additions, or modifications or the portion of the project affected by the addition or modification and not of the entire project. Except as provided in Section 8761.2 of the Code, the original licensee is not relieved of any responsibility arising from the land surveying services of which he or she was in responsible charge.

"(e) The term 'responsible charge' does not refer to any of the following:

"(1) the concept of financial liability;

"(2) management control in a hierarchy of land surveyors or legally authorized civil engineers except as each of the individuals in the hierarchy exercises independent land surveying judgment and thus responsible charge;

"(3) such administrative and management functions as accounting, labor relations, personnel performance standards, marketing of services, or goal setting. While a land surveyor or legally authorized civil engineer may also have such duties in this position, it should not enhance or decrease one's status of being in responsible charge of the work."

COST RECOVERY

12. Section 125.3 of the Code 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.

RELEVANT BACKGROUND FACTS

13. In or about September 2012, a real estate salesperson was selling a parcel of land with a residence in the remote area of South Lake in Kern County, California ("South Lake Property"). During the escrow process, it was discovered that the water well for the residence may have been on the adjacent property and accordingly, a survey was necessary to determine the location of the well.

14. The real estate salesperson contacted E & R Surveying and Consulting ("E & R"), which advertised as a company owned by Eric Sertic ("Mr. Sertic"). Mr. Sertic is not, and never has been, licensed by the Board in any capacity. Since at least October 1, 2007, E & R has existed as a partnership between Mr. Sertic, his brother, and Respondent. Mr. Sertic quoted the real estate salesperson a price of $800 for the survey.

15. The seller of the South Lake Property contacted Mr. Sertic regarding the survey and was also quoted a price of $800: $400 as a down payment and $400 when the survey was complete. There was no written agreement between the seller of the South Lake Property and Mr. Sertic or anyone associated with E & R. A survey for the South Lake Property was completed and the seller of the South Lake Property received a drawing as a result of the survey.

16. The seller of the South Lake Property sent two checks payable to "E & R Surveying" dated September 11, 2012 and September 14, 2012, respectively.

17. In October 2012, the Board received a complaint that Mr. Sertic was conducting business as a land surveyor without a license and an Investigator was assigned to investigate that allegation. The Investigator also inquired into a concern that Mr. Sertic, and not Respondent, had signed some of the surveys that Respondent had submitted to the Kern County Engineering and Surveying Department.

18. In October 2013, the Investigator met with Respondent and Mr. Sertic. Respondent indicated that Mr. Sertic was authorized to sign Respondent's name when the Respondent was not available. The Investigator reviewed several surveys with Respondent and Respondent authenticated his signature on the surveys. However when Respondent reviewed the drawing for the South Lake Property survey, Respondent stated that he had never seen the drawing before.

Moreover, it did not contain his signature or his professional engineer stamp. Mr. Sertic admitted that he had prepared the drawing. Respondent subsequently indicated that he would prepare a Corner Record for the drawing that Mr. Sertic prepared and he would submit it to the Kern County Engineering and Surveying Department.

19. The Investigator spoke to the Director of the Kern County Engineering and Surveying Department who indicated that a Corner Record was not the proper type map for the South Lake Property. Instead, a Record of Survey, which had not been submitted, was required.

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Land Surveying)

20. Respondent is subject to disciplinary action under Code section 8780 subdivision (d) in conjunction with Code section 8761, subdivision (a), on the grounds that Respondent aided and abetted Mr. Sertic, in the unlicensed practice of land surveying. In connection with the South Lake Property job, Respondent allowed his unlicensed partner in E & R, Mr. Sertic, to hold himself out as a licensed land surveyor, to enter into a verbal contract for land surveying services, to receive payment for land surveying services, to conduct a survey, and to prepare a drawing in connection with that survey. Complainant incorporates by reference Paragraphs 13 through 19 as though fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Responsible Charge of Land Surveying Services)

21. Respondent is subject to disciplinary action under Code section 8780, subdivision (d), in conjunction with California Code of Regulations, title 16, section 404.2, in that Respondent failed to maintain responsible charge of land surveying services offered and performed. In connection with the South Lake Property job, Respondent allowed his unlicensed partner in E & R, Mr. Sertic, to hold himself out as a licensed land surveyor, to enter into a verbal contract for land surveying services, to receive payment for land surveying services, to conduct a survey, and to prepare a drawing in connection with that survey. Respondent admitted that he was unaware of the South Lake Property job. Complainant incorporates by reference Paragraphs 13 through 19 as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Professional Land Surveyors' Act)

22. Respondent is subject to disciplinary action under Code section 8780, subdivision (f) on the grounds that Respondent committed multiple violations of the Professional Land Surveyors' Act. The circumstances, which include by reference Paragraphs 13 through 19 are as follows:

(a) Respondent failed to ensure that E & R (through himself or his authorized representative) executed a written contract to provide land surveying services with the seller of the South Lake Property, in violation of Code section 8759.

(b) Respondent failed to include a stamp and signature, or name and license number with interim notations, on the land surveying documents for the South Lake Property survey, in violation of Code section 8761.

(c) Respondent failed to file a Record of Survey for the South Lake Property job within 90 days of completing the field survey or setting monuments, whichever occurred first, in violation of Code section 8762.

PETITION TO REVOKE PROBATION

JURISDICTION

23. This Petition to Revoke Probation is brought before the Board under the authority of the Board's Decision.

24. At all times after the January 11, 2013 effective date of the Decision, Probation Condition Number 4 provided:

Violation of Probation

> If the Respondent violates the probationary conditions in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter has been submitted to the Office of the Attorney General for the filling of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws and Regulations)

25. At all times after the January 11, 2013 effective date of the Decision, Probation Condition Number 1 stated:

> **Obey All Laws**
>
> The Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

26. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1 in that he failed to obey all laws and regulations related to the practice of professional land surveying. Complainant incorporates by reference Paragraphs 13 through 22 of the First Amended Accusation and Petition to Revoke Probation as though fully set forth herein.

SECOND CAUSE TO REVOKE PROBATION

(Monitored Practice: Failure to Obtain Approval of Licensee In Charge of Respondent's Work)

27. At all times after the January 11, 2013 effective date of the Decision, Probation Condition 10 stated:

> **Monitored Practice**
>
> During the period of probation, the Respondent may practice professional civil engineering only under the review and monitoring of a professional engineer licensed in the same branch as Respondent. The reviewing professional engineer shall be approved in advance be the Board or its designee. Such reviewing professional engineer shall initial every signed and sealed document prepared by Respondent in close proximity to the Respondent's signature and seal. The Respondent shall still be the licensee in responsible charge of the professional civil engineering work performed.

28. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 10. The facts and circumstances regarding this violation are that Respondent failed to obtain approval from the Board regarding the professional civil engineer to review and monitor Respondent's work. As of the date of the First Amended Accusation and Petition to Revoke Probation, Respondent has not provided the Board with the name(s) of any professional civil engineer(s) who can monitor his work.

THIRD CAUSE TO REVOKE PROBATION

(Ethics Course: Failure to Complete and Pass a course in Professional Ethics within three and one-half (3 1\2) years from effective date of decision)

29. At all times after the January 11, 2013 effective date of the Decision, Probation Condition 6 stated:

> **Ethics Course**
>
> Within three and one-half (3 1\2) years from the effective date of the decision, the Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee, and shall provide verifiable proof to the Board of his successful completion within thirty (30) days of such completion.

30. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6. The facts and circumstances regarding this violation are that Respondent failed to successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. As of the date of the First Amended Accusation and Petition to Revoke Probation, Respondent has not provided the Board with verifiable proof of his successful completion and passing of a course in professional ethics that was approved in advance by the Board or its designee.

FOURTH CAUSE TO REVOKE PROBATION

(Take and Pass College-Level Courses: Failure to Complete and Pass two (2) college-level civil engineering courses within three and one-half (3 1\2) years from effective date of decision)

31. At all times after the January 11, 2013 effective date of the Decision, Probation Condition 8 stated:

> **Take and Pass College-Level Courses**
>
> Within three and one-half (3 1\2) years from the effective date of the decision, the Respondent shall successfully complete and pass two (2) college-level civil engineering courses. Said courses shall be approved in advance by the Board or its designee. The Respondent shall provide the Board with the official proof of completion of the requisite courses. For purposes of this condition, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars.

32. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8. The facts and circumstances regarding this violation are that Respondent failed to successfully complete and pass two (2) college-level engineering courses, approved in advance by the Board or its designee. As of the date of the First Amended Accusation and Petition to Revoke Probation, Respondent has not provided the Board with official proof of his successful completion and passing of two (2) college-level engineering courses, that were approved in advance by the Board or its designee.

FIFTH CAUSE TO REVOKE PROBATION

(Take and Pass Examination: Failure to take and achieve the passing score as set by the Board for the second division exam within three and one-half (3 1\2) years from effective date of decision)

33. At all times after the January 11, 2013 effective date of the Decision, Probation Condition 9 stated:

> **Take and Pass Examination**
>
> Within three and one-half (3 1\2) years from the effective date of the decision, the Respondent shall take and achieve the passing score as set by the Board for the second division examination, consisting of National Council of Examiners for Engineering and Surveying (NCEES) Principles and Practices of Civil Engineering examination (referred to as the "NCEES 8-hour civil examination"), the California Civil Engineer – Seismic Principles examination (referred to as the "seismic examination") and the California Civil Engineer – Engineering and Surveying examination (referred to as the "engineering surveying examination"). The Respondent shall be required to pay the application and examination development and administration fees in effect at the time he applies to take each examination.

34. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9. The facts and circumstances regarding this violation are that Respondent failed to take and achieve the passing score as set by the Board for the second division exam. As of the date of the First Amended Accusation and Petition to Revoke Probation, Respondent has not submitted any application fees or registered with the NCEES in order to be scheduled for any of the examinations.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this First Amended Accusation and Petition to Revoke Probation, and that following the hearing, the Board for Professional Engineers, Land Surveyors, and Geologists issue a decision:

1. Revoking the probation that was granted by the Board for Professional Engineers, Land Surveyors, and Geologists in Case No. 785-A and imposing the disciplinary order that was stayed thereby revoking Civil Engineer License No. C 32215 issued to Lawrence William Speight;

2. Revoking or suspending Civil Engineer License No. C 32215, issued to Lawrence William Speight;

3. Ordering Lawrence William Speight to pay the Board for Professional Engineers, Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 10/7/16

Original Signed

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and Geologists
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order Effective January 11, 2013

Board for Professional Engineers, Land Surveyors, and Geologists Case No. 785-A

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

In the Matter of the Petition to Revoke Probation against: LAWRENCE WILLIAM SPEIGHT SP8 Engineers & Land Surveyors P. O. Box 4141 Wofford Heights, CA 93285-4141 Civil Engineer License No. C 32215, Respondent.	)	Case No. 785-A

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on January 11, 2013.

IT IS SO ORDERED December 7, 2012.

Original Signed

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

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

In the Matter of the Petition to Revoke Probation Against: **LAWRENCE WILLIAM SPEIGHT** **SP8 Engineers & Land Surveyors** **P.O. Box 4141** **Wofford Heights, CA 93285-4141** **Civil Engineer License No. C 32215** Respondent.	Case No. 785-A OAH No. 2012010330 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Michael A. Cacciotti, Deputy Attorney General.

2. Respondent Lawrence William Speight (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about August 14, 1980, the Board for Professional Engineers, Land Surveyors, and Geologists issued Civil Engineer License No. C 32215 to Respondent. The Civil Engineer

License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 785-A and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Petition to Revoke Probation No. 785-A was filed before the Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on October 6, 2011. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation.

5. A copy of Petition to Revoke Probation No. 785-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Petition to Revoke Probation No. 785-A. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; 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.

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 785-A.

10. Respondent agrees that his Civil Engineer License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. 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 Settlement 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.

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

13. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 32215 issued to Respondent Lawrence William Speight is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **Obey All Laws.** The Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

2. **Submit Reports.** The Respondent shall submit such special reports as the Board may require.

3. **Tolling of Probation.** The period of probation shall be tolled during the time the Respondent is practicing exclusively outside the state of California. If, during the period of probation, the Respondent practices exclusively outside the state of California, the Respondent shall immediately notify the Board in writing.

4. **Violation of Probation.** If the Respondent violates the probationary conditions in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

5. **Completion of Probation.** Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the Respondent's license shall be unconditionally restored.

6. **Ethics Course.** Within three and one-half (3 1\2) years from the effective date of the decision, the Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee, and shall provide verifiable proof to the Board of his successful completion within thirty (30) days of such completion.

7. **Notification.** Within 30 days of the effective date of the decision, the Respondent shall provide the Board with evidence that he has provided all persons or entities with whom he has a contractual or employment relationship relating to professional civil engineering services with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, the Respondent may be required to provide the same notification to each new person or entity with whom he has a contractual or employment relationship relating to professional civil engineering services and shall report to the Board the name and address of each person or entity

so notified.

8. **Take and Pass College-Level Courses.** Within three and one-half (3 1\2) years from the effective date of the decision, the Respondent shall successfully complete and pass two (2) college-level civil engineering courses. Said courses shall be approved in advance by the Board or its designee. The Respondent shall provide the Board with official proof of completion of the requisite courses. For purposes of this condition, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars

9. **Take And Pass Examinations.** Within three and one-half (3 1\2) years from the effective date of the decision, the Respondent shall take and achieve the passing score as set by the Board for the second division examination, consisting of the National Council of Examiners for Engineering and Surveying (NCEES) Priniciples and Practices of Civil Engineering examination (referred to as the "NCEES 8-hour civil examination"), the California Civil Engineer - Seismic Principles examination (referred to as the "seismic examination") and the California Civil Engineer – Engineering and Surveying examination (referred to as the "engineering surveying examination"). The Respondent shall be required to pay the application and examination development and administration fees in effect at the time he applies to take each examination.

10. **Monitored Practice.** During the period of probation, the Respondent may practice professional civil engineering only under the review and monitoring of a professional engineer licensed in the same branch as the Respondent. This reviewing professional engineer shall be approved in advance by the Board or its designee. Such reviewing professional engineer shall initial every signed and sealed document prepared by Respondent in close proximity to the Respondent's signature and seal. The Respondent shall still be the licensee in responsible charge of the professional civil engineering work performed.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated

Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: 10-4-2012

Original Signed

LAWRENCE WILLIAM SPEIGHT
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Dated: 10/4/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

Original Signed

MICHAEL A. CACCIOTTI
Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: _____

LAWRENCE WILLIAM SPEIGHT
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors, and Geologists of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

MICHAEL A. CACCIOTTI
Deputy Attorney General
Attorneys for Complainant

LA2011600283
Stipulation.rtf

Exhibit A

Petition to Revoke Probation No. 785-A

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General
MICHELLE MCCARRON
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State Bar No. 237031
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against, **LAWRENCE WILLIAM SPEIGHT** SP8 Engineers & Land Surveyors P.O. Box 4141 Wofford Heights, CA 93285-4141 Civil Engineer License No. C 32215 Respondent.	Case No. 785-A **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Richard B. Moore, PLS (Complainant) brings this Petition to Revoke Probation solely in his official capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs (Board).

2. On or about August 14, 1980, the Board issued Civil Engineer License No. C 32215 to Lawrence William Speight (Respondent). The Civil Engineer License will expire on December 31, 2012, unless renewed.

3. In a disciplinary action entitled *In the Matter of Accusation Against Lawrence William Speight*, Case No. 785-A, the Board issued a decision, effective December 15, 2006, in which Respondent's Civil Engineer License was revoked. However, the revocation was stayed and Respondent's Civil Engineer License was placed on probation for a period of four (4) years

with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4. On or about December 14, 2010, the Board referred this matter to the Office of the Attorney General for preparation of a Petition to Revoke Probation against Respondent.

JURISDICTION

5. This Petition to Revoke Probation 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.

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

PROBATION TERMS

7. Among the terms and conditions imposed by the Board in Case No. 785-A are:

> (4) If Respondent violates the probationary conditions in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.
>
> (6) Within twelve months of the effective date of the Decision, Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.
>
> (8) Within 24 months of the effective date of the Decision, Respondent shall successfully complete and pass, with a grade of "C" or better, two college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars.
>
> (9) Within three and one-half (3 1/2) years of the effective date of the Decision, Respondent shall take and achieve the passing score as set by the Board for the second division examination (including the seismic principles and engineering surveying examinations for civil engineers). The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. Respondent shall be required to pay the application fee as

described in Section 407 of Title 16 of the California Code of Regulations and shall be afforded all examination appeal rights as described in Title 16, California Code of Regulations sections 407, 443, and 444.

FIRST CAUSE TO REVOKE PROBATION

(Course in Professional Ethics)

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6, referenced above, in that on or before December 15, 2007, twelve (12) months of the effective date of the decision, Respondent failed to successfully complete and pass a course in professional ethics, approved in advance by the board or its designee.

SECOND CAUSE TO REVOKE PROBATION

(Complete Two Board Approved College Courses)

9. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above, in that on or before December 15, 2008, twenty-four (24) months of the effective date of the decision, Respondent failed to successfully complete and pass two (2) college-level civil engineering courses, approved in advance by the Board or its designee.

THIRD CAUSE TO REVOKE PROBATION

(Pass the Board's Second Division Examination)

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above in that on or before June 15, 2010, three and one-half (3 ½) years of the effective date of the decision, Respondent failed to successfully complete and pass the entire second division civil engineering examination.

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PRAYER

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

1. Revoking the probation that was granted by the Board in Case No. 785-A and imposing the disciplinary order that was stayed thereby revoking Civil Engineer License No. C 32215 issued to Lawrence William Speight;

2. Revoking or suspending Civil Engineer License No. C 32215, issued to Lawrence William Speight; and

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

Original Signed

DATED: 9/16/11

Richard B. Moore, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and Geologists
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board for Professional Engineers and Land Surveyors Accusation Case No. 785-A

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

In the Matter of the Accusation against: LAWRENCE WILLIAM SPEIGHT SP8 Engineers & Land Surveyors P. O. Box 4141 630 East Evans Road, Suite 11 Wofford Heights, CA 93285-4141 Civil Engineer License No. C 32215, Respondent.	)	Case No. 785-A OAH No. L2006070334

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(B), Paragraphs (8) and (9) of the Order, appearing on Pages 10 and 11 of the Proposed Decision, are hereby modified for technical reasons for purposes for clarity as follows:

(8) Within 24 months of the effective date of the Decision, Respondent shall successfully complete and pass, with a grade of "C" or better, two college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars.

(9) Within three and one-half (3 ½) years of the effective date of the Decision, Respondent shall take and achieve the passing score as set by the Board for the second division examination (including the seismic principles and engineering surveying examinations for civil engineers). The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. Respondent shall be required to pay the application fee as described in Section 407 of Title 16 of the California Code of Regulations and shall be afforded all examination appeal rights as described in Title 16, California Code of Regulations sections 407, 443, and 444.

All of the other terms and conditions of probation specified in the Proposed Decision of the Administrative Law Judge are not amended, modified, or otherwise altered.

This Decision shall become effective on December 15, 2006.

IT IS SO ORDERED this 16th day of November, 2006.

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

Original Signed

By _____

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

In the Matter of the Accusation Against: LAWRENCE WILLIAM SPEIGHT P.O. Box 4141 SP8 Engineers & Land Surveyors 630 East Evans Road, Suite 11 Wofford Heights, CA 93285-4141 Civil Engineer License No. C32215 Respondent.	Agency Case No. 785-A OAH No. L2006070334

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on October 2 and 3, 2006, in Los Angeles, California.

Anne Hunter, Deputy Attorney General, represented Cindi Christenson, P.E., Executive Officer, Board for Professional Engineers and Land Surveyors, Department of Consumer Affairs (Complainant).

Lawrence W. Speight (Respondent) appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 3, 2006.

FACTUAL FINDINGS

1. On December 27, 2005, Complainant, acting in her official capacity, signed the Accusation against Respondent. On February 8, 2006, Respondent signed a Notice of Defense, and this action ensued.

2. Complainant contends Respondent, in practicing civil engineering, committed acts of deceit, misrepresentation, and/or fraud, acted negligently, and/or incompetently, and breached a contract for engineering services, in violation of Business and Professions Code section 6775, subdivisions (b), (c), and (d). Complainant seeks to revoke or suspend Respondent's civil engineering license for these acts and further seeks the costs of

investigation and enforcement of this matter, pursuant to Business and Professions Code section 125.3.

3. Respondent contends he performed his civil engineering obligations properly and professionally and denies any wrongdoing, as alleged by Complainant.

4. For the reasons set forth below, Complainant's allegations are sustained in part and denied in part.

5. The Board for Professional Engineers and Land Surveyors (the Board) issued Respondent civil engineer license number C 32215 on August 14, 1980; it expires on December 31, 2006, unless renewed. Respondent's civil engineer license was in effect at all times relevant to this action. The Board has not imposed discipline on Respondent's license previously.[1]

6. On July 4, 2003, Respondent entered into a written agreement with the owner (the property owner) of real property in Kernville, California. The property owner intended to install a septic system on the property and engaged Respondent to design such a system. Pursuant to the written agreement, Respondent agreed to "perform an elevation study," "design [a] mound system disposal system," and "perform [a percolation] test." (Exhibit 5.) The property owner agreed to compensate Respondent an estimated total cost of between $1,000 and $1,200. The agreement further delineated that the parties contemplated two soil tests (extra costs), and that the property owner would be responsible to make all submittals to the Kern County Environmental Health Services Department (the County) for approval.

7. Sometime on or after July 27, 2003, Respondent drafted what he believed was a mound septic system design. Respondent drafted his notations and calculations on pages containing the proprietary product information of a septic system parts company. That is, where appropriate, Respondent inserted calculations, relevant to his septic system design, onto the sample designs drawn by the septic system parts company displaying its product information. Respondent intended to use that company's parts and general mound design for the property owner's project. Respondent's design calculations contained other documents and technical analyses. He noted his design was to accommodate a "2 structure (3BR/2BA) plus one dump station for RV occupancy." (Exhibit 6, "Special Notes.") Respondent entitled these compiled documents as "Septic Design Calculations." (Exhibit 6.)

8. On September 5, 2003, the property owner, having never received a copy of the septic design, sent Respondent a letter complaining that Respondent had not prepared the septic design as promised. In his letter, the property owner delineated payments he had already made to Respondent, and ended his letter by stating, "[a]ny further delays on your part or ignoring your professional duty to respond will result in [action against your license]." (Exhibit 8.)

---

[1] At hearing, Complainant proffered evidence of a pending, unrelated investigation against Respondent. (See Legal Conclusion 17, n. 2, *post*.)

9. On or about September 6, 2003, the property owner received a copy of Respondent's design. The property owner submitted the design to the County for review and approval.

10. On or about September 6, 2003, the property owner paid $571.25 to Technicon Engineering, for soil testing done pursuant to the written agreement. On or about August 14, 2003, Technicon Engineering had billed the property owner $571.25 for the soil testing, but addressed and mailed the bill to Respondent. Respondent had not paid the bill by September 6, 2003. Once the property owner became aware of the outstanding bill, and fearing that failure to pay the bill would lead to a mechanic's lien against his property, the property owner paid the bill.

11. On September 6, 2003, Respondent drafted a billing statement showing the property owner owing Respondent $1,099.95 for his rendered services. Respondent described those services in his statement as follows: "field survey, determine elevations, perform percolation testing, send 2 soils samples to Technicon Engineering, subcontract soils testing, design mound septic tank system, provide on [sic] copy of the report to be submitted to the Kern County Environmental Health [by the property owner]." (Exhibit 9.)

12. On September 16, 2003, the County sent Respondent a letter informing him that the County needed additional information to complete its review of his septic design. Specifically, the County delineated the following needed items: 1) "[s]oil boring information, showing profile and depth[,] 2) [p]ercolation test information, including procedure and depth[, and] [a]ctual mound design, showing placement of infiltrators, mound height, and soil separation from bottom of trenches to groundwater." (Exhibit 7, original underlining.) Respondent never submitted the additional information sought by the County.

13. On October 8, 2003, the property owner sent Respondent a letter informing Respondent that the property owner would file charges against him and seek damages because Respondent failed to submit the additional information sought by the County. Respondent still did not submit the additional information to the County. In his letter, the property owner told Respondent that if the County did not approve the septic design by October 10, 2003, he would submit a complaint against him to the appropriate state licensing agencies.

14. On a date uncertain, Respondent informed the property owner that the County had approved Respondent's septic design and that the County solely needed further analyses of the mound. The property owner never received confirmation of approval from the County.

15. On November 17, 2003, the property owner sent Respondent a letter asking for reimbursement of money he paid Respondent. Respondent did not respond.

16. On March 11, 2004, in response to two letters from the Board to Respondent regarding the property owner's complaint, Respondent sent the Board a letter responding to the property owner's allegations. Respondent told the Board the County's plan check engineer had approved his design, and that according to the County, the mound simply needed further analysis. Respondent told the Board he could not perform soil boring tests or percolation tests because there was no existing mound to test. He asserted the project's need for a permeability test by a soils testing laboratory. He stated his design included full calculations but because the property owner had not identified where the mound was to be constructed, nor did the property owner know how many buildings the septic system was to serve, Respondent could take no further actions. Respondent further asserted that the property owner breached the agreement by, among other things, terminating his employment. The evidence did not prove the Respondent's assertions. (See, Legal Conclusions 12-15, *post.*) Respondent told the Board that, "what [the property owner] contracted for ... [the property owner] received properly and professionally." (Exhibit 16.)

17. At hearing, Respondent submitted a document that he asserted showed he performed an elevation study. (Exhibit C.) The Board never received a copy of the document proffered by Respondent prior to this hearing. The evidence did not prove Respondent performed an elevation study. (See, Legal Conclusion 11, *post.*) Respondent further asserted at hearing that a percolation test was substantially similar to a permeability test, and therefore, he met his contractual obligation to perform a percolation test. The evidence did not prove that a percolation test was substantially similar to a permeability test. (See, Legal Conclusion 13, *post.*)

18. Complainant proffered the opinion of a civil engineer with 16 years of relevant experience (Complainant's expert). Complainant's expert opined that Respondent's septic design was incomplete, however, of what Respondent completed, it was not an inferior design. Complainant's expert found discrepancies between Respondent's March 11, 2004 response to the Board (Factual Finding 16), and Respondent's design, though the inconsistencies did not rise to the level of negligence or incompetence. Complainant's expert agreed with the County, that additional and different tests were needed to complete the design.

19. Complainant's expert opined Respondent acted incompetently and negligently by failing to perform an elevation study (a necessary element of the proposed project, in his opinion), and for relying on the property owner to advise Respondent of the intended location of the mound system. According to Complainant's expert, it is incumbent on the engineer to propose a mound system's location because an engineer would know set back information, proximities to waterways, and applicable code criteria. Additionally, Complainant's expert opined Respondent acted incompetently by failing to perform a percolation test because a permeability test was sufficiently distinct in nature from a percolation test and would produce distinct results. Complainant's expert further opined that, Respondent acted incompetently and negligently because, in this matter, percolation and soil boring tests were necessary, and those tests should have been performed on the native soil (underneath the proposed mound), and not on the mound material, as Respondent asserted.

20. Complainant incurred $993.75 in technical expert costs and $5,458.75 in costs to prosecute this matter through the California Department of Justice, Office of the Attorney General. Complainant's counsel submitted a declaration stating it was her good faith estimate that, up to the date of hearing, the Office of the Attorney General would incur and bill to the Board an additional seven hours of time ($1,106) to prepare for the prosecution of this matter.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent Lawrence W. Speight's civil engineering license number C 32215, for misrepresentation, pursuant to Business and Professions Code section 6775, subdivision (b), as set forth in Factual Findings 1, 5, 14, and Legal Conclusions 5, and 7-9.

2. Cause exists to revoke or suspend Respondent Lawrence W. Speight's civil engineering license number C 32215, for negligence and incompetence, pursuant to Business and Professions Code section 6775, subdivision (c), as set forth in Factual Findings 1, 5-7, 12, 16-17, 19, and Legal Conclusions 5, 7, and 10-15.

3. Cause exists to revoke or suspend Respondent Lawrence W. Speight's civil engineering license number C 32215, for breach of contract, pursuant to Business and Professions Code section 6775, subdivision (d), as set forth in Factual Findings 1, 5-6, 12, 16-19, and Legal Conclusions 5, 7, and 16.

4. Cause exists to grant the Board's investigative and enforcement costs, pursuant to Business and Professions Code section 125.3, as set forth in Factual Findings 1, 5, 20, and Legal Conclusions 5-7, and 18.

5. Business and Professions Code section 6775 states in pertinent part:

> The board may receive and investigate complaints against registered professional engineers, and make findings thereon.
>
> By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:
>
> [¶] . . . [¶]
>
> (b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in his or her practice.
>
> (c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

(d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.

[¶] . . . [¶]

(g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

(h) Who violates any provision of this chapter.

6. Business and Professions Code section 125.3, subdivision (a), states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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.

7. California Code of Regulations, section 418, subdivision (b), states in pertinent part:

(b) When considering the suspension or revocation of . . . the license of a professional engineer . . . the Board will consider the following criteria in evaluating the rehabilitation of such person and his . . . present eligibility to retain his . . . license:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any act(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which could also be considered as grounds for suspension, or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

[¶] . . .[¶]

(6) Total criminal record.

8. Complainant alleged Respondent engaged in deceit, misrepresentation, and/or fraud when he billed the property owner for soil testing while 1) also claiming he was unable to perform any soil testing because no mound existed on the property, and alternatively, 2) he had the property owner contract directly with the soils testing company. Respondent billed the property owner for subcontracted soil testing and sending two soil samples to Technicon Engineering on September 6, 2003. However, Complainant did not prove Respondent specifically claimed he was unable to perform any soil testing because no mound existed on the property. Respondent only claimed (erroneously) he could not perform soil boring tests without the mound (Factual Finding 16). Indeed, he took steps to cause soil testing through Technicon Engineering, and insisted at hearing that the permeability testing that was performed was necessary. Respondent billed the property owner for, among other things, the soil testing that was performed. In addition, there was insufficient evidence to prove Respondent fraudulently, deceitfully, or by misrepresentation intended to bill the property owner for soil testing while simultaneously causing the property owner to contract directly with the soils testing company. Therefore, Complainant did not prove Respondent engaged in deceit, misrepresentation, and/or fraud by these acts, as alleged.

9. Respondent did however misrepresent the facts when he told the property owner the County had approved his septic design. (Factual Finding 14.) At hearing, Respondent did not deny communicating alleged County approval to the property owner. Moreover, he stated the same to the Board in writing. (Factual Finding 16.) The evidence did not prove the County had ever approved his design. The only evidence of the County's response to the septic system design was the County's September 16, 2003 letter requesting additional data for its review process, data Respondent never provided. The County never approved Respondent's septic design as he asserted to the property owner, and therefore he violated Business and Professions Code section 6775, subdivision (b).

10. Respondent committed acts of incompetence and negligence in practicing civil engineering by failing to perform an elevation study, relying on the property owner to advise him of the location of the mound system, failing to perform a percolation test, failing to do a soil boring test, and failing to complete the septic design.

11. Complainant proved Respondent did not perform an elevation study, a necessity for the intended project. Respondent's proffered document at hearing was insufficient to prove he performed such a study because Respondent had no reliable proof he calculated the elevations and drafted the document at the time he was performing on the contract. Therefore, Respondent's failure to perform an elevation study of the property was an act of incompetence and negligence in violation of Business and Professions Code section 6775, subdivision (c).

12. Complainant proved that, in this matter, it was Respondent's obligation, as the civil engineer with the particular knowledge necessary to appropriately locate a mound system, to advise the property owner of the potential location(s) of the mound. Respondent's expectation that the property owner would inform him of the mound's desired location was an act of incompetence and negligence. (Bus. & Prof. Code § 6775, subd. (c).)

13. The evidence showed that a percolation test was necessary to the design of a mound septic system, and Respondent failed to perform one. The evidence did not prove a permeability test was equivalent to a percolation test, as Respondent asserted. A permeability test and a percolation test are sufficiently distinct from each other in the manner each is conducted and in the resultant information. As a licensed civil engineer for 26 years, Respondent is charged with having sufficient knowledge of those differences. Respondent did not provide evidence of a divergence of opinion among civil engineers as to the two tests' similarities or differences, nor did he provide competent evidence supporting his assertion equating the two tests. His assertion regarding the similarity between a percolation and permeability test was unsubstantiated. Respondent argued that he could not perform a percolation test because no mound existed on the property. Complainant established that a competent, non-negligent civil engineer would perform a percolation test on the native soil below the proposed mound, not on the mound material itself. A percolation test on the mound material would be incompetent and negligent civil engineering. Therefore, whether a mound existed on the property was immaterial to Respondent's ability to perform a percolation test, and his failure to do so was an act of incompetence and negligence. (Bus. & Prof. Code § 6775, subd. (c).)

14. Similarly, Complainant proved soil boring testing was necessary for this project, and that the soil boring, like the percolation test, must be done on the native soil and not on mound fill material, as Respondent argued. The evidence proved that a competent, non-negligent civil engineer would have this knowledge. Respondent did not provide any competent evidence to the contrary, or evidence of a divergence in the professional community regarding soil boring tests that would support Respondent's position. Therefore, the lack of a mound was not a barrier to the soil boring testing that Respondent was obligated to perform, and his failure to perform the testing was an act of incompetence and negligence, in violation of Business and Professions Code section 6775, subdivision (c).

15. Respondent did not complete the septic design. He failed to explain why he refused to provide the County with the additional information it needed to complete its review. Had he done so, and given that Complainant's expert opined Respondent's design, though incomplete, was not inferior, it seems likely that Respondent would have been able to complete the design to the County's and the property owner's satisfaction; but he did not. First, Respondent argued he could do no more without an existing mound, but Complainant's expert established that the mound was unnecessary for Respondent's tasks. Second, Respondent argued that the property owner did not know how many buildings the septic system would serve, and that lack of knowledge was a barrier to his performance. However, that was untrue, as Respondent's own design calculations noted the septic system was to accommodate a three-bedroom, two-bath home and an RV clean-out. (Factual Finding 7.) Third, Respondent argued the property owner terminated his employment, breaching their contract and prohibiting his performance. The evidence did not prove the property owner ever terminated Respondent's employment. To the contrary, the property owner's letters dated September 5, 2003 (Factual Finding 8), and October 8, 2003 (Factual Finding 13) contained language that showed the property owner expected, indeed demanded further

performance by Respondent. Therefore, Respondent's failure to complete the septic design demonstrated an act of incompetence and negligence, in violation of Business and Professions Code section 6775, subdivision (c).

16. Respondent breached the written agreement between himself and the property owner by failing to perform an elevation study, and failing to perform a percolation test. As discussed *ante*, Respondent had no viable excuse for failing to perform either task, both of which were specific terms of the contract. (Factual Finding 6.) Consequently, Respondent violated Business and Professions Code section 6775, subdivision (d).

17. Respondent's inexplicable failures to adequately respond to the County, and appropriately respond to the property owner resulted in the incomplete project, a breakdown of professional trust with the property owner, and the consequential complaint filed with the Board. Respondent failed to act in the manner expected of a licensed civil engineer. However, his transgressions must be assessed within the context of his 26 years of civil engineering practice with no disciplinary action by the Board.[2] Given that these acts are the only violations Respondent has been found to have committed over the last two and one-half decades, revocation of his license would be disproportionate to the findings and conclusions in this one matter. The public would be adequately protected by revoking his license, but staying that revocation and imposing a period of probation with sufficient terms and conditions that Respondent must obey.

18. The costs incurred by Complainant for this matter's investigation and enforcement ($993.75 and $5,458.75) are just and reasonable. Complainant did not establish that the additional seven hours of preparation time estimated by Complainant's counsel was incurred, therefore, the additional $1,106 was not granted.

ORDER

Respondent Lawrence William Speight's civil engineer license number C32215 is revoked, however the revocation is stayed for a period of four years, under the following ten terms and conditions of probation.

(1) Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

(2) Respondent shall submit such special reports as the Board may require.

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[2] Complainant's proffered evidence of a pending, unrelated investigation against Respondent was insufficient to merit consideration here. The other investigation is active and Respondent retains his right to challenge those other allegations. It would violate Respondent's right to the due process of law to consider that investigation as evidence of acts he committed (Cal. Code Regs., tit. 16, § 418, subd. (b)(2)) when he neither has admitted so, nor has an administrative tribunal concluded so.

(3) The period of probation shall be tolled during the time Respondent is practicing exclusively outside the State of California. If, during the period of probation, Respondent practices exclusively outside the State of California, Respondent shall immediately notify the Board in writing.

(4) If Respondent violates the probationary conditions in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

(5) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, Respondent's license shall be unconditionally restored.

(6) Within twelve months of the effective date of the Decision, Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.

(7) Within 30 days of the effective date of the Decision, Respondent shall provide the Board with evidence that he has provided all persons or entities with whom he has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering in which the violation occurred with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, Respondent may be required to provide the same notification of each new person or entity with whom he has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

(8) Within 24 months of the effective date of the Decision, Respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars.

(9) Within 24 months of the effective date of the Decision, Respondent shall take and achieve the passing score as set by the Board for the second division examination (including the seismic principles and engineering surveying examinations for civil engineers). The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. Respondent shall be required to pay

the application fee as described in California Code of Regulations, title 16, section 407 and shall be afforded all examination appeal rights as described in California Code of Regulations, title 16, sections 407, 443, and 444.

(10) During the period of probation, Respondent may practice professional engineering only under the supervision of a professional engineer licensed in the same branch as the Respondent. This person or persons shall be approved in advance by the Board or its designee. Such supervising professional engineer shall initial every stamped or sealed document in close proximity to Respondent's stamp or seal.

Original Signed

Dated: November 1, 2006

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

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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: LAWRENCE WILLIAM SPEIGHT P. O. Box 4141 SP8 Engineers & Land Surveyors 630 East Evans Road, Suite 11 Wofford Heights, CA 93285-4141 Civil Engineer License No. C32215 Respondent.	Case No. 785-A **A C C U S A T I O N**

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 August 14, 1980, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C32215 to Lawrence William Speight (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, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers

and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part, that "[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:

. . . .

"(b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in his or her practice.

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

"(d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.

. . . .

"(g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

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

5. Business and Professions Code section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

6. Section 6796 of the Code provides, in pertinent part, that certificates of

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registration as a professional engineer may be renewed any time within three years after they expire.

7. Section 6796.3 of the Code provides, in pertinent part, that certificates of registration as a professional engineer that are not renewed within three years after they expire may still be renewed, restored, reinstated or restored if certain conditions apply.

8. Section 125.3 of the Code 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.

PALOMA COURT PROJECT

9. On or about July 4, 2003, H. C.[1] (client) contracted with respondent to do an elevation study, design a mound system for a septic tank, and conduct a percolation test on the mound system for a new residence located at 136 Paloma Court in Kernville, California, (Paloma Court Project). Client advised respondent that time was of the essence because he needed to get a certificate of occupancy in order to refinance the property. Client paid respondent a $500 deposit with the agreement that the design would be completed in one week. On or about July 11, 2003, respondent told the client that he would deliver the design to the Kern County Environmental Health Department, and the client gave him a check for $120 for the processing fees. From on or about July 14, 2003, to on or about September 5, 2003, the client made numerous inquiries regarding the status of the project. On or about September 6, 2003, respondent informed the client that he had not submitted anything to the County for approval. The client obtained the design and submitted it to the County for approval. The County's Environmental Health Specialist told the client that the design papers, signed and stamped by respondent, were "copies of the sales brochure." Respondent has refused to submit a designed system or to do a percolation test for the client without first receiving additional fees.

10. On or about September 16, 2003, the Kern County Environmental Health

1. The identity of the individual will be made available during the course of discovery.

Services Department addressed a letter to respondent, requesting the following information in order to complete their review: 1) soil boring information, showing profile and depth; 2) percolation test information, including procedure and depth; and 3) actual mound design, showing placement of infiltrators, mound height, and soil separation from bottom of trenches to the groundwater.

11. On or about April 13, 2005, respondent faxed a letter to the Board stating that it was impossible to perform soil borings for a mound system because there was no mound for him to test since the client had not decided where he wanted the sewer disposal located. He stated that he could not perform a percolation test because there was no mound to test and the client had not identified the desired location. Respondent also stated that he had advised the client to engage a soils testing laboratory to perform permeability tests for a feasibility study.

FIRST CAUSE FOR DISCIPLINE

(Negligence and/or Incompetence)

12. Respondent is subject to disciplinary action under section 6775, subdivision (c), of the Code, on the grounds that Respondent committed acts of negligence and/or incompetence in the practice of civil engineering. The circumstances are as follows:

a. Respondent failed to prepare an elevation study or to consider the existing elevations when designing the client's sewage disposal system.

b. Respondent failed to do the appropriate research to determine where a mound system should be located.

c. Respondent failed to comply with the County's request for soil boring information. Respondent stated that this information was impossible to comply with because there was no mound to test. Respondent demonstrated incompetence in that soil borings are generally required on existing soil, not mound fill material.

d. Respondent failed to comply with the County's request for percolation test information, including procedure and depth. Respondent stated that he did not perform a percolation test because there was no mound and the client had not identified the desired location for a mound. Respondent had no clear understanding of why the County required a percolation

test. In engineering practice, a percolation test is normally done within the soil upon which the mound system will be placed.

e. Respondent failed to comply with the County's request for the actual mound design showing placement of infiltrators, mound height and soil separation from the bottom of the trenches to the groundwater.

SECOND CAUSE FOR DISCIPLINE

(Breach of Contract)

13. Respondent is subject to disciplinary action under section 6775, subdivision (d) of the Code in that Respondent committed an act of breach of contract. Respondent failed to complete all the terms and conditions of the contract entered into on or about July 4, 2003, as follows:

a. Failed to perform an elevation study.

b. Failed to perform a percolation test.

THIRD CAUSE FOR DISCIPLINE

(Deceit, Misrepresentation or Fraud)

14. Respondent is subject to disciplinary action under section 6775, subdivision (b) of the Code in that he committed the following acts of deceit, misrepresentation or fraud in the course of his civil engineering practice:

a. Billed the client for soils tests and samples on September 6, 2003, when he claimed he was unable to perform any soils testing because there was no mound on the property and, alternatively, that the client contracted directly with the soils testing company.

b. Advised the client that the County had approved his design when the design had not been approved.

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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 No. C32215, issued to Lawrence William Speight;

2. Ordering Lawrence William Speight to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 12/27/05

Original Signed

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

LA2005502419
Speight ACC.wpd
CML (11/22/2005)