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

11 In the Matter of the Petition to Revoke
12 Probation Against,

Case No. 785-A

13 **LAWRENCE WILLIAM SPEIGHT**
SP8 Engineers & Land Surveyors
14 P.O. Box 4141
Wofford Heights, CA 93285-4141

PETITION TO REVOKE PROBATION

15 Civil Engineer License No. C 32215
16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

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

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27 which Respondent's Civil Engineer License was revoked.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

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

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

5 JURISDICTION

6 5. This Petition to Revoke Probation is brought before the Board under the authority of
7 the following laws. All section references are to the Business and Professions Code unless
8 otherwise indicated.

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

13 PROBATION TERMS

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

15 (4) If Respondent violates the probationary conditions in any respect, the Board,
16 after giving Respondent notice and the opportunity to be heard, may vacate the stay
17 and reinstate the disciplinary order which was stayed. If, during the period of
18 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.

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

21 (8) Within 24 months of the effective date of the Decision, Respondent shall
22 successfully complete and pass, with a grade of "C" or better, two college-level
23 courses, approved in advance by the Board or its designee. Such courses shall be
24 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.

25 (9) Within three and one-half (3 1/2) years of the effective date of the Decision,
26 Respondent shall take and achieve the passing score as set by the Board for the
27 second division examination (including the seismic principles and engineering
28 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

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

4 **FIRST CAUSE TO REVOKE PROBATION**

5 **(Course in Professional Ethics)**

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

10 **SECOND CAUSE TO REVOKE PROBATION**

11 **(Complete Two Board Approved College Courses)**

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

17 **THIRD CAUSE TO REVOKE PROBATION**

18 **(Pass the Board's Second Division Examination)**

19 10. Respondent's probation is subject to revocation because he failed to comply with
20 Probation Condition 9, referenced above in that on or before June 15, 2010, three and
21 one-half (3 ½) years of the effective date of the decision, Respondent failed to successfully
22 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.

DATED: 9/16/11

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

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)

Case No. 785-A

OAH No. L2006070334

Civil Engineer License No. C 32215,)

Respondent.)

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

By Original Signed

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.

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.

Dated: November 1, 2006

Original Signed

DANIEL JUÁREZ
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 ANNE HUNTER, State Bar No. 136982
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 785-A

13 LAWRENCE WILLIAM SPEIGHT
P. O. Box 4141
14 SP8 Engineers & Land Surveyors
630 East Evans Road, Suite 11
Wofford Heights, CA 93285-4141
15 Civil Engineer License No. C32215

16 Respondent.

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 14, 1980, the Board for Professional Engineers and
24 Land Surveyors issued Civil Engineer License No. C32215 to Lawrence William Speight
25 (Respondent). The Civil Engineer license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on December 31, 2006, unless renewed.

27 **JURISDICTION**

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

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

4 4. Section 6775 of the Code states, in pertinent part, that “[T]he board may
5 reprove, suspend for a period not to exceed two years, or revoke the certificate of any
6 professional engineer registered under this chapter:

7

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

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

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

14

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

18 “(h) Who violates any provision of this chapter.”

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

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

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

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

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

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

10 **PALOMA COURT PROJECT**

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

26 10. On or about September 16, 2003, the Kern County Environmental Health
27

28

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

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

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

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Negligence and/or Incompetence)**

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

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

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

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

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

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

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

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Breach of Contract)**

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

12 a. Failed to perform an elevation study.

13 b. Failed to perform a percolation test.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Deceit, Misrepresentation or Fraud)**

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

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

22 b. Advised the client that the County had approved his design when the
23 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)