

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

In the Matter of the First Amended)	
Accusation against:)	
)	
MICHAEL ALAN SANCHEZ)	Case No. 1016-A
1522 Sweet Basil Circle)	
Hemet, CA 92545)	OAH No. 2014060591
)	
Land Surveyor License No. L 5508,)	
)	
Respondent.)	
_____)	

DECISION

Pursuant to Government Code section 11517, the Board for Professional Engineers, Land Surveyors, and Geologists of the State of California hereby adopts the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

In adopting this Proposed Decision as its Decision, the Board for Professional Engineers, Land Surveyors, and Geologists has made the following technical or other minor changes pursuant to Government Code section 11517(c)(2)(C):

Page 10, Paragraph 26, under “Factual Findings and Legal Conclusions”: The reference to Business and Professions Code section 8762.4 is corrected to refer to Business and Professions Code section 8762(b)(4).

Page 22, Paragraph 66; Page 26, Paragraph 79; and Page 27, Paragraph 82, under “Factual Findings and Legal Conclusions”: The references to “Santa Ana Avenue” are corrected to read “Santa Clara Avenue.”

Page 32, Footnote 22, under “Factual Findings and Legal Conclusions”: The reference to the name “Thomas Hearrin” is corrected to read “Thomas Herrin.”

Page 37, Paragraph 131, under “Legal Findings and Legal Conclusions”: “the county” is corrected to read “the board.”

Furthermore, in adopting this Proposed Decision as its Decision, the Board for Professional Engineers, Land Surveyors, and Geologists has reduced the penalty order pursuant to Government Code section 11517(c)(2)(B) as follows:

Condition 8 of the Order is revised as follows:

(6) Respondent shall successfully complete and pass, with a grade of "C" or better, three (3) college-level courses, approved in advance by the Board or its designee. Such course 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. Said courses shall be completed at least sixty (60) days prior to the completion of the probationary period.

(10) Respondent shall pay to the Board the amount of \$7,500.00 for its costs of investigation and enforcement. Respondent may apply to the board for a plan to make monthly payments.

This Decision shall become effective on October 16, 2015.

IT IS SO ORDERED September 10, 2015.

Original Signed

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

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

In the Matter of the Second Amended
Accusation Against:

MICHAEL ALAN SANCHEZ,

Land Surveyor License No. L-5508

Respondent.

Case No. 1016-A

OAH No. 2014060591

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on June 2 through 4, 2015.

David E. Hausfeld, Deputy Attorney General, Department of Justice represented the complainant, Richard B. Moore, PLS, Executive Officer, Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, State of California.

Seth Weinstein, Attorney at Law, Law Offices of Seth Weinstein, represented respondent, Michael Alan Sanchez, who was present during the hearing.

The matter was submitted on June 4, 2015.

PROTECTIVE ORDER

Respondent submitted financial records which were received in evidence. The financial records contain private, confidential, personal information and are subject to a protective order.

SEALING ORDER

Financial records were admitted into evidence that contained private, confidential, personal information. It was not practical to delete this information from the records. To

protect privacy and confidential financial information from inappropriate disclosure, a written Protective Order Sealing Confidential Records was issued on June 4, 2015 and provided to the parties on the record. It has been marked and admitted as Exhibit Q. The order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS AND LEGAL CONCLUSIONS OF ALLEGED CAUSES FOR IMPOSING DISCIPLINE

1. On March 16, 1984, the board issued Land Surveyor License Number L 5508 to respondent. His Land Surveyor License will expire on September 30, 2016, unless renewed. Respondent does not have a history of prior discipline.

2. On June 22, 2012, complainant signed an Accusation that contained 26 Causes for Discipline. Respondent timely filed a Notice of Defense. On May 22, 2014, complainant signed a First Amended Accusation that contained 31 Causes for Discipline.

3. On November 12, 2014, complaint signed a Second Amended Accusation (Accusation) that contains 34 Causes for Discipline. The Accusation alleges multiple violations related to professional services rendered for eight properties. The violations alleged include misrepresentation, negligence, breach of contract, violation of a required term of a contract, failure to execute a contract, failure to file required surveys and records, failure to set and/or tag durable monuments, aiding and abetting an unlicensed person, and failure to maintain responsible charge. The Accusation seeks the suspension or revocation of respondent's license and reimbursement for reasonable costs of the investigation and enforcement of the case.

General Surveying Principles

4. If a land surveyor determines a boundary or finds material discrepancies between his or her survey and established recorded surveys, a Record of Survey must be filed with the County Surveyor. A Corner Record may be filed in lieu of a Record of Survey when the licensed surveyor finds the monuments are consistent with written descriptions in filed and established maps.

A Corner Record must be filed when a land surveyor finds or replaces a described corner. A Corner Record must be filed when a land surveyor finds, sets or re-sets an established corner monument or description and when an established corner is used to reestablish or re-trace a line that is subsequently used as a point of measurement.

When a land surveyor finds, sets, or uses a monument, the monument is required to be of a durable material, and the land surveyor is required to tag the monument with a brass tag containing the land surveyor's license number.

Companies that offer land surveying services must associate or employ a licensed land surveyor to oversee the surveying work. If the business entity is a corporation, the licensed land surveyor must be a corporate officer. The licensed surveyor is called the “responsible charge.” A responsible charge may delegate tasks associated with a land survey, such as measuring distances, making calculations, and drafting a map. But the responsible charge must make all substantial decisions about the survey and must review and approve of all of the information contained on a map.

A land surveyor is required to file survey maps with the County Surveyor’s office for the appropriate county within 90 days after he or she completes a field survey. County personnel check all maps submitted to a County Surveyor before they are filed. The County Surveyor can return a map to a land surveyor for corrections before the map is filed. The County Surveyor’s office is expected to return a map for corrections within 20 days of its receipt. A land surveyor must make the corrections and re-submit the map to the County Surveyor within a maximum of 30 days; additional time may be provided depending upon the difficulty of the survey. The land surveyor is expected to timely submit, or resubmit, a map or request an extension of time.

A County Surveyor can request, but not require, changes to a survey map. A land surveyor has the option to make the requested corrections or request the County Surveyor to file the survey map “as is” without making the corrections. A map filed “as is” is referred to as a forced filed map. If the land surveyor requests a forced filed map, the County Surveyor files the map but attaches comments to it. Once a map is accepted for filing with the county office, it is available to the public and becomes public information.

A land surveyor cannot resolve a boundary dispute. A land surveyor may give his or her opinion about where a boundary lies using, for example, established points on filed records and written descriptions in property transfer documents. However, if a boundary dispute remains, it can be resolved only by a court.

Respondent’s Background

5. Respondent participated in the California Engineers Joint Apprenticeship Program in 1978. He has been a licensed land surveyor since 1984. Respondent estimated that he has performed 2000 to 5000 land surveying jobs; he could remember only one or two customers who told him they were not happy with his work.

6. Respondent is married and has six children, ages 23 to 38. He lives in Hemet, California. His wife is employed part-time as an in-home care provider. Beginning in 2009, respondent encountered significant personal problems that he believes had a negative effect on his professional performance. The recession that began in 2008 greatly reduced the amount of work available to him and, by 2009, his income had significantly decreased. Some of his children were similarly affected by the recession and moved back into the parental home. Respondent’s income was not sufficient to keep up with the bills, and he lost the home.

Respondent's son, Michael J. Sanchez (Michael), served two combat deployments in Iraq. While there, one of Michael's friends took Michael's place in an assignment and was killed when he encountered an Improvised Explosive Device. Michael also was seriously injured in combat; he has a large, visible scar around the back of his head. In 2009, Michael returned from his second Iraqi deployment. His combat experiences had a significant impact on him, and he was diagnosed with Post Traumatic Stress Disorder. He is on medical leave from the Army because he was severely depressed and made several suicide attempts. Respondent spent a lot of his time helping and caring for Michael.

Michael and Diana Michelle Sanchez, respondent's daughter, testified at the hearing concerning the hardships the family faced beginning in 2009. Diana is a Certified Public Accountant and lives in San Diego. She discussed Michael's mental health problems. She stated that Michael's condition severely affected respondent's ability to work and was stressful for the entire family. Diana also disclosed that her mother, respondent's wife, became dependent on alcohol. In addition to caring for Michael, respondent cared for his wife, who ultimately went into a rehabilitation program around 2008 to 2010, while younger children requiring care were living in the home. Diana also confirmed that when the recession occurred, it hit her family "hard." The family did not have sufficient financial resources and lost their home. Diana tried to help her parents purchase another home. She gives them money to help provide for their basic needs.

Michael spoke of the long scar across the back of his head that is a reminder of the injury he received in combat. He had difficulty with readjustment and reintegration after returning from his second deployment to Iraq. He had difficulty obtaining employment and getting into school. Respondent allowed him to return to the family home to live, despite the fact that respondent was experiencing financial problems at the time.

7. In 2012, respondent had knee problems and was diagnosed with sleep apnea. The sleep apnea, which respondent believes he experienced for many years before being diagnosed, caused him to be drowsy and unable to think clearly. His knee improved after arthroscopic surgery, but he believes he may need a knee replacement in the future.

8. Respondent currently receives unemployment benefits. He is listed as available for work with his union. Each day he waits at the Union Hall for work. The work available through the Union Hall is usually supervised by a large construction company.

Oakwood Street, Pasadena, California Project

CONTRACT FOR SERVICES

9. In 2008, respondent agreed to be the responsible charge for Nationwide Surveying, Inc.

10. In or around August 2009, homeowner Gevorg Katrdzhyan contacted Nationwide to survey his property on Oakwood Street in Pasadena, where he was constructing a

fence. Nationwide prepared an invoice for the work dated August 17, 2009. The invoice stated that work would commence on August 18, 2009. The services to be performed were described as “Establish fence corners, set a total of (4) marks . . .” An unsigned authorization stated that Mr. Katrdzhyan agreed to pay \$700.00 for the work. The invoice did not contain any information identifying respondent.

A second invoice, also dated August 17, 2009, was similar to the first except that it contained an unsigned authorization that stated Mr. Katrdzhyan agreed to pay \$900.00 for the survey. The second invoice contained respondent’s land surveyor’s stamp.

On September 9, 2009, respondent signed a Claim of Mechanic’s Lien that was recorded against the property on Oakwood Street. The Claim of Mechanic’s Lien asserted that Mr. Katrdzhyan owed Nationwide \$1,100.00 for work described as “Set stakes or points for fence construction.” Respondent signed the verification of the mechanic’s lien as a “partner” of Nationwide.

COMPLAINT TO THE BOARD AND THE BOARD’S INVESTIGATION

11. On August 24, 2009, Mr. Katrdzhyan contacted the Department of Consumer Affairs by e-mail to complain about the survey performed on his Oakwood Street property by Frank Sandoval. Mr. Katrdzhyan stated that he expected Mr. Sandoval to install permanent markers or provide him with documentation showing the corners of his property. Mr. Katrdzhyan complained that “all he did was put four wooden sticks around my property.” Mr. Katrdzhyan further stated that Nationwide demanded an additional \$250 to prepare a certified map and an additional \$3000 to file a Corner Record with the Los Angeles County Surveyor. Mr. Katrdzhyan further noted that he subsequently obtained a second estimate from another company that agreed to do the survey, including all the work, research and recording, for \$700. Mr. Katrdzhyan wrote that he wanted a certified map that showed where his property corners were located without paying extra for it. Mr. Katrdzhyan’s complaint was forwarded to the board.

12. On October 20, 2009, Christine Doering,¹ an Enforcement Analyst with the board, wrote to respondent advising him that the board had received Mr. Katrdzhyan’s complaint. The letter summarized Mr. Katrdzhyan’s complaint and noted that “There does not appear to have been a written contract.” Ms. Doering expressed concern that Nationwide Surveying Inc.’s Organizational Record on file with the board listed Francisco Sandoval as the individual in responsible charge of land surveying performed for Nationwide. Ms. Doering wrote that Mr. Sandoval was not licensed by the board and cited four provisions of the Business and Professions Code that respondent may have violated with regard to the Oakwood Street survey.

13. By letter received by the board on October 28, 2009, respondent stated he had an ownership interest in Nationwide Surveying and was the responsible charge for “all land

¹ Ms. Doering testified at the hearing.

surveying done by Nationwide Surveying.” He wrote that the contract with Mr. Katrdzhyan was for construction staking of a fence and was not intended to determine the property’s corners. Respondent stated that he had set curb and fence stakes for many public agencies and was never required to file a public record for those stakes. Respondent sarcastically wrote:

Personally, I feel that the Board would generate a great deal of work for surveyors, if the statutes could be amended to include any staking based on known distances to property lines, such as setbacks, curb and gutter, fences, walls, drainage devices, houses, buildings, wells, pumps and many, many other improvements. This would also give the county surveyors plenty of plan check work and generate fees for their office.

Respondent represented that he reviewed the Oakwood Street project and found no discrepancies in the work. He stated he believed Mr. Katrdzhyan filed a complaint because he did not want to pay for the work that was performed.

14. By letter dated November 17, 2009, Ms. Doering asked respondent how he determined where to set the fence stakes if he did not first determine the property’s corners. She stated that, with regard to the Oakwood Street project, it appeared that respondent established the property corners; failed to tag the monuments he used; failed to file a Corner Record; and failed to execute a written contract.

15. In an e-mail sent on November 29, 2009, respondent wrote that he used “centimeter accuracy GPS monuments” in conjunction with the recorded vesting map to get an “idea” of where the corners of the property were. He then placed construction stakes “a ‘safe’ distance away from where the GPS is indicating” so that the fence would not encroach on an adjacent property. He reiterated that the contract with Mr. Katrdzhyan was to set construction limit lines and not property lines. He asserted the invoice provided to Mr. Katrdzhyan satisfied the requirements of a contract because it described the work to be performed, and Mr. Katrdzhyan signed it.² He represented he had removed the title “invoice” from the document and planned to use it as a contract with other customers.

16. In a second e-mail sent on November 29, 2009, respondent told Ms. Doering that, due to the complaint, he asked Nationwide to set the corners of Mr. Katrdzhyan’s property and file a Corner Record. He asked if this would satisfy the board and “lay the issue to rest.”

Respondent also reiterated his contention that he had placed “thousands of [construction] stakes” for a multitude of public agencies and private construction firms in his 30 years as a surveyor by using recorded vesting maps as a guide. He had never been required to file a public record when placing construction stakes. He asserted that requiring small, private

² A signed invoice was not presented at the hearing; however, the board’s expert referenced an initialed copy of the invoice that Mr. Katrdzhyan submitted with his complaint. The initialed invoice was not submitted at the hearing.

firms, such as Nationwide, to file Corner Records or Records of Survey for construction staking, and not requiring the same of public agencies and contractors, was discriminatory.

Respondent asked Ms. Doering to address this concern if the investigation continued. He also asked for a complaint form that he and “many other licensed surveyors, who have similar concerns as myself at the biased application of the law against licensed surveyors” could use to file complaints, “when general contractors and public agencies . . . continue with those same practices of setting points near and/or related to vesting line that you may find objectionable.” He asked the board to issue a determination that construction staking without filing a public record violated the Business and Professions Code’s Professional Land Surveyors Act so that he “can enlist the assistance of other professional to ‘whistleblow’ the many entities . . . especially those using public funds to skirt the law”

Respondent further asserted that Nationwide offered to set the corners of Mr. Katrdzhyan’s property at the time of contracting, but Mr. Katrdzhyan did not want to pay them to do that.

17. By e-mail sent on December 1, 2009, Ms. Doering stated that removing the word “invoice” from the document respondent provided to Mr. Katrdzhyan did not make the document compliant with contract requirements in the Professional Land Surveyors Act. She deferred responding to respondent’s question about Corner Records.

18. By letter dated December 29, 2009, Ms. Doering advised respondent that the board’s investigation would continue whether or not he filed a Corner Record on the Oakwood Street property. She requested more information about respondent’s involvement with Nationwide. Respondent did not respond to this letter, and Ms. Doering resent it on January 28, 2010. Respondent again did not respond.

EXPERT EVALUATION – PATRICK SAVAGE

19. In May 2010, the board retained Patrick Savage as a technical expert to review and evaluate the surveying work performed on the Oakwood Street project. Mr. Savage has been the owner and land surveyor of Favreau Savage Land Surveying, Inc. since 1988. He has been involved in the land surveying industry since 1976 and has been a licensed land surveyor since 1982. The board has asked Mr. Savage to provide an expert opinion on approximately 30 cases. To reach his expert opinion in this case, Mr. Savage reviewed the board’s files; he did not go to the Oakwood Street property or conduct interviews.

SUFFICIENCY OF THE CONTRACT

20. Mr. Savage reviewed an “invoice” initialed by Mr. Katrdzhyan and an unsigned revised version of an “invoice.” Mr. Savage determined that the initialed invoice that respondent and Nationwide used did not comply with the contract requirements in Business and Professions Code section 8759. The invoice “does not bear the name and license number of the professional authorized to offer the services.” Further, it “does not describe a procedure for

either party to terminate the contract, or accommodate additional services.” Mr. Savage also referenced a revised invoice that contained respondent’s professional seal but did not comply in all other respects. Without explanation, the revised invoice provided that Mr. Katrdzhyan was to pay 128.57percent of the original estimate.³

Mr. Savage found the description of the work agreed to be performed by Nationwide was unclear in all versions of the invoice. He testified that the contract between Nationwide and Mr. Katrdzhyan should have described the work to be performed as finding the property line and setting the property corners. He felt that the lack of clarity was one reason there was a dispute between respondent and Mr. Katrdzhyan. None of the “invoices” relating to the Oakwood Street project complied with Business and Professions Code section 8759.

THE REQUIREMENT TO LOCATE THE CORNERS AND FILE A CORNER RECORD

21. Mr. Savage reviewed a diagram of the work performed on the Oakwood Street project that respondent submitted to the board. The diagram was an enlarged photocopy of a portion of the subdivision tract map that included Mr. Katrdzhyan’s property. The diagram contained large crosses drawn near the property’s corners; the crosses represented 60D nails that Nationwide placed to show where the corners of a fence could be located. The diagram did not show a fence or the relationship of a fence to the property lines. Mr. Savage noted that “a typical construction plan for a fence would indicate the location of the fence relative to the property line, often parallel to it at a designated distance.” Mr. Savage questioned respondent’s assertion that the points set did not have a relation to the actual property line. He queried, “How then does the surveyor know that the points are inside of the property lines? How is the property owner or contractor to know that a fence built to those marks is within the limits of the property?”

22. Mr. Savage stated that, to determine the placement of a fence, a surveyor must reestablish or retrace the lot. He opined that respondent’s placement of a stake a “safe distance” away from a point on a GPS system was “not an accepted method for boundary determination.” He expressed the opinion that a property owner hires a surveyor to locate the property lines “so that they may enjoy the use of all of their property.” In order to maximize the usable space, property owners generally want a fence to be reasonably near the property line. Mr. Savage stated that a surveyor must compare monuments on the property to monument descriptions set forth in maps and other official documents. He or she must measure distances and compare the measurements to the official records to determine whether the surveyor’s measurements comport with recorded surveys. If the survey is a retracement of lines shown on a recorded map, and there are no discrepancies in the description and measurements, the surveyor need not file a Record of Survey, but he or she must file a Corner Record to document any property corners set or used during the survey. If the descriptions and measurements are “off,” deficiencies or excesses are distributed equally along the lines measured and a Record of Survey must be filed. (Bus. & Prof. Code §§ 8762, 8765.)

³ This “revised” invoice was not submitted at the hearing.

Mr. Savage opined that respondent's claim that he was not required to file a Corner Record demonstrated a lack of understanding "of the difference between providing survey stakes for a project under construction and performing a property line survey in an established neighborhood." Mr. Savage also found that respondent failed to mark the lines established in his survey with monuments that were sufficient in number, durable, and tagged with respondent's license number.⁴ (Bus. & Prof. Code § 8771.) The nails set by respondent did not satisfy these requirements.

23. Mr. Savage questioned whether respondent fulfilled his duties as the person in responsible charge of the work performed on the Oakwood Street project. He noted that the responsible charge must make, or review and approve, all land surveying decisions before they are implemented, and make all decisions about the preparation of maps and documents that will be filed with the County Surveyor. According to Mr. Savage, respondent did not submit to the board any field notes or records showing the basis for decisions made about the work performed at the Oakwood Street property. The responses respondent gave to the board's questions suggested that he did not have the required level of involvement in the project as a responsible charge; he did not properly supervise the work performed, and he did not make important decisions he was required to make about the project.

24. Mr. Savage found that respondent's work fell below the standard of care in the surveying profession. He opined that respondent was incompetent because he was either unaware of important rules and regulations or misinterpreted them. He believed respondent committed a breach of contract because Nationwide promised to perform certain services that were not provided.

RESPONDENT'S POSITION

25. Respondent testified that he became the responsible charge for land surveying work at Nationwide in 2008. He represented that he had an ownership interest in Nationwide when he was the responsible charge. He had been the responsible charge for Nationwide for 8 to 20 jobs before he was asked to be the responsible charge in connection with the Oakwood Street project - a project he understood to involve construction staking for the installation of a fence. He did not meet the customer, Mr. Katrdzhyan, but spoke with him on the telephone and went to the property location during the fence staking.

FENCE STAKING – REQUIREMENT FOR A CORNER RECORD

26. Respondent determined that the boundaries of the Oakwood Street property had already been established and that the proposed construction of a fence was within the boundaries. It was respondent's belief that if a boundary is established, it is permissible to set construction stakes within the boundary and off the property line without filing maps. Respondent claimed that the difference between fence staking and setting a boundary was

⁴ A monument tag is a small brass disc with information about the surveyor, including his or her license number.

explained to Mr. Katrdzhyan and that Mr. Katrdzhyan understood that Nationwide was doing fence staking. Respondent said he did not tell Mr. Katrdzhyan he would receive a Record of Survey.

Respondent testified that his preference when doing fence staking is to find the original boundary by using established monuments or other recorded records. If he is unable to find established monuments or records, he uses mathematics to find the boundary line. He agreed that it was necessary to find the boundary line to set stakes within it. Respondent knew that when a land surveyor sets boundaries for corners, the land surveyor must file a Corner Report. However, he believed that when a land surveyor sets points for the construction of a fence within the established boundaries of a property, and the points were expected to be destroyed during construction, a land surveyor was not required to tag and record the temporary monuments or file a Corner Record.

Respondent understood that if the surveyor “establishes,” or creates a line, or marks an unmarked corner, the surveyor must record a map. According to respondent, retracement of a line means the surveyor found monuments established by another surveyor and used those monuments to “retrace” the established lines. He believed the surveyor may, or may not, be required to record a map for a retracement.

In the late 1990s, respondent became aware of the board’s Policy Resolution #96-03. Adopted in 1996, Policy Resolution #96-03 interpreted the pre-2012 version of Business and Professions Code section 8762 and provided that a Corner Record was not required when staking for a fence “if the fence staking is along a previously established boundary or property line If monuments are set to mark or reference the previously located lines or corners . . . a Corner Record is required to be filed.” The same resolution provided that a land surveyor was not required to file a Corner Record or Record of Survey when staking the foundation of a house “when an existing boundary or property line has been previously established and shown on a map of record . . . to allow for the stake out of the foundation of the proposed house in accordance with the setbacks and dimensions shown and delineated on the house plans.” On the other hand, if the boundary line was required to be established in order to stake the foundation, a map must be filed. Respondent testified that he relied on this policy when he performed the work on the Oakwood Street project. However, complainant and respondent both agreed that the board withdrew and rescinded Policy Resolution 96-03,⁵ and that the rescinded policy does not provide justification for respondent’s failure to file a Corner Record in this matter.

Respondent acknowledged that, in 2012, the legislature modified Section 8762 and clarified that a survey is required to be recorded when retracing “one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.” (Bus & Prof Code § 8762.4.)

⁵ The evidence did not establish when the board policy was rescinded; however, a letter in evidence suggests it was in or before 2005.

27. When respondent became aware of Mr. Katrdzhyan's complaint, he asked Ms. Doering if he should file the Corner Record. Ms. Doering did not tell him whether he should file the Corner Record; nonetheless, he "took it upon [himself]" to file it. At that time he did not think a Corner Record was required, but he has changed his position and believes that, to comply with the intent of the law, it should have been filed.

ADEQUACY OF THE CONTRACT

28. Respondent conceded that the "invoice" did not comply with the requirements of the Professional Land Surveyors Act, and he has corrected his contract template to bring his contracts into compliance with the Act.

RESPONSE TO SPECIFIC CAUSES CONCERNING THE OAKWOOD STREET PROJECT

29. Respondent denied that he misrepresented his role as the responsible party, that he failed to maintain responsible charge, or that he aided and abetted Nationwide in performing unlicensed land surveying work. He conceded that, because the work was substandard, he did not meet the standard of care. However, respondent claimed he reasonably, but mistakenly, misinterpreted the provisions of the Land Surveyor's Act. He denied that he breached the contract with Mr. Katrdzhyan, even though he admitted he now understands that a Corner Record should have been filed. He stated that Mr. Katrdzhyan was advised that a map would not be filed. Respondent admitted that the contract did not comply with the requirements in the Act.

EVALUATION OF THE CAUSES FOR DISCIPLINE CONCERNING OAKWOOD STREET

30. The First Cause for Discipline in the Accusation alleged that respondent "misrepresented the facts in his practice of land surveying" in violation of Business and Professions Code section 8780, subdivision (a), by misrepresenting his role as the responsible party. Respondent testified that he spoke with Mr. Katrdzhyan on the telephone and that he was present on the property during the "fence staking." No evidence was presented to contradict respondent's assertions regarding these matters. The evidence does not support a finding that respondent misrepresented his role as the responsible party.

31. The Second Cause for Discipline alleged that respondent was negligent in the practice of land surveying in violation of Business and Professions Code section 8780, subdivision (b), by failing to recognize the necessity of filing a Corner Record when surveying the Oakwood Street property for the installation of a fence. The fact that respondent believed he could determine where to set fence stakes if he did not first determine where the corners of the property were demonstrated a serious misunderstanding of land surveying. As discussed above, respondent belatedly admitted that he was required to file a Corner Record in conjunction with his survey of the Oakwood Street property. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (b).

32. The Third Cause for Discipline alleged that respondent aided and abetted Nationwide in the unlicensed practice of land surveying in violation of Business and Professions Code section 8780, subdivision (f). Respondent was a licensed land surveyor. He asserted he had an ownership interest in Nationwide. No evidence was submitted to contradict his testimony. Under these circumstances, Nationwide was authorized to contract for, and provide, land surveying services. The evidence does not support a finding that respondent aided and abetted Nationwide in the unlicensed practice of land surveying.

33. The Fourth Cause for Discipline alleged that respondent breached the contract with Mr. Katrdzhyan in violation of Business and Professions Code section 8780, subdivision (g), because he provided an incomplete survey of the Oakwood Street property. The “invoice” for services was between Nationwide and Mr. Katrdzhyan. No evidence was presented to support a finding that respondent was a party to the contract or that he was individually liable for a breach of the contract if one existed.

34. The Fifth Cause for Discipline alleged that respondent failed to provide a written contract that complied with the requirements of Business and Professions Code section 8759, subdivisions (a)(3), (4) and (5), prior to providing land survey services in violation of Business and Professions Code section 8780, subdivision (d). Respondent admitted this violation. Cause exists to discipline respondent’s license for the violation of Business and Professions Code section 8780, subdivision (d).

35. The Sixth Cause for Discipline alleged that respondent failed to maintain responsible charge in violation of Business and Professions Code section 8780, subdivision (h), and California Code of Regulations, title 16, section 404.2. Respondent testified that he spoke with Mr. Katrdzhyan on the telephone and that he was present on the property when the “fence staking” was performed. Respondent signed a Mechanic’s Lien recorded against the Oakwood Street property that indicated he had a continuing involvement with the project. No evidence was presented to contradict respondent’s assertions. Respondent testified that he reviewed all of the work done on the Oakwood Street property, and he accepted responsibility for failing to file a Corner Record when one was required. The evidence does not support a finding that respondent failed to maintain responsible charge.

Polson Circle, Martinez, California Project

COMPLAINT TO THE BOARD AND BOARD’S INVESTIGATION

36. On December 10, 2009, Saul Mejia signed a written complaint to the board alleging that respondent, working under DM Consultants, improperly surveyed property on Polson Circle in Martinez, California, that belonged to Brian McGrath; Mr. McGrath’s property was adjacent to Mr. Mejia’s property. Mr. Mejia said respondent placed nails on what respondent asserted were the corners of Mr. McGrath’s property and prepared a “Construction Limits Survey” dated November 9, 2009. Mr. Mejia believed that respondent miscalculated the boundary line and placed the nails within Mr. Mejia’s property. Mr. Mejia was concerned that, if respondent’s survey was correct, he would lose a significant strip of

land in his backyard. Mr. Mejia hired his own surveyor, Johnny Rinehart, to determine the corners and boundary of Mr. Mejia's property. Mr. Rinehart set three points on Mr. Mejia's back lot line and filed a Corner Record with the Contra Costa County Surveyor. Mr. Rinehart determined that the correct boundary line was four feet from the nails set by respondent and shown in the "Construction Limits Survey." Mr. Rinehart told Mr. Mejia that respondent's map contained several errors. Mr. Mejia also complained that respondent failed to put his license number on the points he set to mark the property line and failed to file a Corner Record. He also noted that respondent's name was misspelled on the stamp on the "Construction Limits Survey."

Mr. Mejia learned that respondent refunded the money Mr. McGrath paid for the Polson Circle survey. Mr. Mejia said he paid Mr. Rinehart \$1000 to correct respondent's mistakes. To resolve his complaint, Mr. Mejia wanted respondent to reimburse him for this cost.

37. Ms. Doering was assigned to investigate Mr. Mejia's complaint. On December 29, 2009, and February 3, 2010, Ms. Doering sent letters to respondent advising him of the allegations and requesting information in response.

38. On February 3, 2010, Ms. Doering spoke with respondent. Respondent told Ms. Doering that he refunded Mr. McGrath's fees and that the survey was not completed. When told that nails had been set, respondent stated that no points were to have been set. Ms. Doering requested that respondent provide his explanation in writing.

39. On March 26, 2010, respondent sent an e-mail to Ms. Doering advising her that he had filed a Corner Record on the Polson Circle property. He advised her that he would provide recordation information when it was received. In the e-mail he wrote:

This job was cancelled, because of the problem I had with the last one where you are telling me that stakes set for construction near property lines need to have records filed, so we gave the client back their money, it was to [sic] far to go back to pull the stakes, and those notes were sent out by mistake. Please have the board issue a letter that any points staked near or related to or derived from property lines need to have a record filed on them, as many surveyors working for the State and Local public entities need to know they will be held liable for the stakes they set for fences, pipes, curb, clearing, etc.

40. On June 22, 2010, the Contra Costa County Surveyor's Office returned the Polson Circle Corner Record to respondent for corrections.

41. On July 27, 2010, Ms. Doering requested additional information from respondent. In a letter dated August 25, 2010, respondent advised the board that, because of the complaint, the corners of the Polson Circle property were set at no cost to Mr. McGrath

and a Corner Record was filed. With the letter, respondent provided several documents, including a Corner Record, a raw data file, an invoice for work to be performed by DM Consultants, and the affidavit of Roger Licea. In the affidavit, Mr. Licea stated he was the “party chief” sent to perform the survey for the Polson Circle property. When he arrived at the property, Mr. McGrath was not there. Nonetheless, Mr. Licea decided to conduct a preliminary investigation of the property and set some “preliminary control points.” He stated that when the property owner arrived, the property owner decided not to proceed with the survey. Mr. Licea affirmed that the property owner understood the preliminary control points were not corners and said he would take them out of the ground. Mr. Licea said no fees were charged to the homeowner. The sketch Mr. Licea made was placed in the file but was not supposed to be used. When Mr. Licea returned to the office, he forgot to tell respondent what had happened.⁶

Respondent also enclosed a Disassociation Form dated August 10, 2010, confirming his disassociation from DM Consultants, and a letter to Mr. Licea demanding that he “cease and desist from using [respondent’s] license (No. 5508) to operate a business to perform land surveying services in California.”

42. Respondent spoke to Ms. Doering on September 7, 2010, and she advised him that the County Surveyor had not received the resubmitted, corrected Corner Record as requested. Ms. Doering sent respondent letters on September 28 and October 27, 2010 requesting information about the status of the Corner Record. By e-mail sent on November 11, 2010, respondent provided Ms. Doering with the corrected Corner Record and advised her that it had been mailed to the County Surveyor. Respondent added that it had taken him so long to respond because “there is little work, and most of my time is spent trying to find enough work to keep the company afloat.”

43. In January 2011, Ms. Doering again requested information about the status of the Corner Record for the Polson Circle property. In an e-mail sent January 16, 2011, respondent advised Ms. Doering that he mailed the Corner Record to the County Surveyor and asked that it be recorded “as is.” Respondent explained that his “being slow to act” resulted from the slow economy and financial concerns that included having to short-sell his home and care for a son who was diagnosed with post-traumatic stress syndrome after serving in the military. The County Surveyor filed the Corner Record on January 25, 2011.

⁶ Mr. Licea’s statements are contradicted by Mr. McGrath in an e-mail to Ms. Fernandez sent August 29, 2011. Mr. McGrath wrote that Mr. Licea performed the survey on the Polson Circle property and gave Mr. McGrath a “detailed drawing” of the survey results; Mr. McGrath gave Mr. Licea a check for \$800.00 for the survey. Mr. McGrath showed the map to Mr. Mejia. Mr. Mejia disputed the results and hired Mr. Rinehart to conduct a new survey which disclosed errors in Mr. Licea’s survey and map. When confronted with his errors, Mr. Licea refunded the \$800.00 Mr. McGrath paid for the survey. Mr. McGrath’s recollection of events is more persuasive than the explanation given by Mr. Licea; however, there was no evidence that respondent was aware of the misrepresentations in Mr. Licea’s affidavit when he provided it to the board.

44. In February 2011, respondent's cases were transferred to Enforcement Analyst Cindy Fernandez.⁷ When the cases were transferred, respondent asked Ms. Fernandez if she could assist him in determining whether it was necessary to file a Record of Survey or Corner Record in seven specific scenarios relating to construction of a road, fence, wall or improvement and determining setbacks. Senior Land Surveyor Registrar Ric Moore responded to respondent's questions. Mr. Moore stated that six of the seven scenarios mandated a public record filing. Respondent wrote back to Mr. Moore expressing his continuing concern that public agencies and large engineering companies have not been held to the same standard as a surveyor working for a smaller company. Respondent offered to "act as a whistleblower on many large projects where staking occurred, that according to the definition you outlined, should have filed records. Large companies . . . can also be forced to comply. This would immediately put many surveyors back to work. As a vested member of the Operating Engineers, I believe I could get their help to find more whistleblowers."

EXPERT EVALUATION – PATRICK SAVAGE

45. In July 2011, the board retained Mr. Savage as a technical expert to review and evaluate the surveying work performed on the Polson Circle project. Mr. Savage reviewed the board's files, including respondent's submissions; he did not visit the property.

Mr. Savage compared the Corner Record respondent submitted, the map Mr. Licea drew, the map prepared by Mr. Rinehart, and the subdivision map filed by the developer. He found discrepancies in Mr. Licea's and respondent's maps and determined that neither map was correct. He raised a concern that respondent may have filed a Corner Record without performing a survey and that the corners described in his map may not have been set.

Mr. Savage opined that the "invoice" used by DM Consultants did not satisfy the requirements of a contract in accordance with the Professional Land Surveyors Act. The description of the work in the invoice included tasks that could be performed only under the responsible charge of a licensed surveyor. Comments by Mr. Licea in his affidavit suggested that he had made decisions about surveying the Polson Circle property without the supervision of a licensed surveyor.

Mr. Savage also found that the nails set during Mr. Licea's survey did not comply with Business and Professions Code sections 8771 and 8772 because they were not durable and they were not tagged with the license number of the responsible surveyor. For the reasons stated with regard to the Oakwood Street project, Mr. Savage found that respondent was required to file a Corner Record after the survey of the Polson Circle property.

Mr. Savage concluded that respondent used "substandard methods in the practice of land surveying," and he was negligent.

⁷ Ms. Fernandez is retired from the board. Tiffany Criswell, Enforcement Program Manager was familiar with the case and testified at the hearing.

RESPONDENT'S POSITION

46. Respondent testified that he was the responsible charge for DM Consultants and that Mr. Licea worked under the authority of his license. Respondent stated he was not involved with the Polson Circle project, did not get paid, and was not aware of the land survey until the board told him about Mr. Mejia's complaint.⁸ Respondent asserted that he instructed Mr. Licea that respondent had to be involved in any boundary work in which Mr. Licea engaged. However, respondent believed that Mr. Licea could provide construction staking without respondent's authority or oversight. Respondent now realizes he was wrong and that he was required to supervise construction staking. At the time respondent was supervising Mr. Licea, respondent believed his oversight of Mr. Licea was "by the books," but by the time of the hearing respondent realized he was wrong. Respondent, as the responsible charge, accepted responsibility for what he called Mr. Licea's "lack of ethics."⁹

Respondent admitted there were errors and deficiencies in work performed in the Polson Circle project. At the time the work was performed, respondent did not believe he was required to file a Corner Record for the Polson Circle survey, but he now understands that, to comply with the "intent of the law," a Corner Record should have been filed. He filed a Corner Record at his own expense to resolve the issue and be in compliance with the law. He believed the Corner Record was filed within 90 days of the boundary survey. But he did not go to the property, and he would have to review field notes to confirm that. He admitted that he did not make the corrections to the Corner Record in a timely manner. After corrections were requested by the County Surveyor, respondent told the County Surveyor's office to file the map over County Surveyor's objection.

Respondent denied that he failed to discharge his responsibilities as responsible charge. He believed he was not responsible because he was unaware of what Mr. Licea was doing. He does not believe that, in the ordinary course of business, he could be aware of everything every employee was doing. Respondent also denied that he aided and abetted Mr. Licea to perform unlicensed land surveying. He denied that he failed to perform his duties by failing to obtain a written contract or failing to file a survey map. He denied that he failed

⁸ This testimony is contradicted by respondent's March 26, 2010 e-mail in which he asserted, "This job was cancelled, because of the problem I had with the last one where you are telling me that stakes set for construction near property lines need to have records filed, so we gave the client back their money" Respondent's testimony that he was unaware of what Mr. Licea was doing was more persuasive than his statement in the e-mail, based partially upon the fact that Mr. Licea was not truthful about the sequence of events.

⁹ It is notable that, unlike with the Scott Street project discussed herein, respondent accepted responsibility for Mr. Licea's actions on the Polson Circle project despite some similar facts. With respect to both projects, respondent asserted he did not know what Mr. Licea was doing, and the maps Mr. Licea prepared for those properties contained seals in which respondent's first and last names were misspelled.

to set and tag durable monuments and noted that the County Surveyor did not make that claim in notes for corrections on the map.

EVALUATION OF THE CAUSES FOR DISCIPLINE CONCERNING POLSON CIRCLE

47. The Seventh Cause for Discipline alleged that respondent “misrepresented the facts in his practice of land surveying” in violation of Business and Professions Code section 8780, subdivision (a), by misrepresenting his role as the responsible party.¹⁰ Respondent admitted that he was the responsible charge for DM Consulting when Mr. Licea went to the Polson Circle property. However, there is no evidence that respondent spoke to Mr. McGrath. When the deficiencies of Mr. Licea’s survey were disclosed, the fees Mr. McGrath paid were refunded. Respondent thereafter performed the survey at no cost to Mr. McGrath, and a Corner Record was filed. On these facts, the evidence is insufficient to support a finding that respondent misrepresented his role as the responsible party.

48. The Eighth Cause for Discipline alleged that respondent was negligent in the practice of land surveying in violation of Business and Professions Code section 8780, subdivision (b), by failing to include necessary measurements; failing to accurately locate the rear property line; setting sub-standard monuments; and failing to adequately supervise Mr. Licea. Respondent claimed he did not know that Mr. Licea was doing surveying work at Polson Circle. But, the reason respondent did not know Mr. Licea was doing surveying work was the result of his mistaken belief that he did not need to supervise construction staking. Mr. Licea stated that he did only “preliminary” work on the Polson Circle survey and that he placed a “sketch” in the file that was not supposed to be used. Respondent’s and Mr. Licea’s statements are contradicted by the fact that the “sketch” is titled “Construction Limits Survey” and contains what purports to be respondent’s stamp and signature. Respondent did not challenge the legitimacy of the stamp or his signature on the map. Further, the map was given to Mr. McGrath. Mr. Savage found that the Construction Limits Survey map Mr. Licea drafted, and the Corner Record respondent prepared, contained material errors and deficiencies. In fact, the errors were such that Mr. Savage questioned whether respondent filed the Corner Record without performing a survey and whether corners described in his map were actually set. On these facts, cause exists to discipline respondent’s license for the violation of Business and Professions Code section 8780, subdivision (b).

49. The Ninth Cause for Discipline alleged that respondent aided and abetted DM Consultants and Mr. Licea in the unlicensed practice of land surveying in violation of Business and Professions Code section 8780, subdivision (f). Respondent claimed he did not know that Mr. Licea was doing surveying work at Polson Circle, but he did not know partly because he wrongfully believed he did not need to supervise construction staking. Respondent’s failure to know his responsibilities and obligations as responsible charge allowed Mr. Licea and DM

¹⁰ Several Causes for Discipline relating to the Polson Circle property refer to “paragraph 24.” Paragraph 24 of the Accusation does not concern the Polson Circle property. The references to paragraph 24 are deemed to be typographical errors and to refer to paragraph number 26.

Consultants to provide surveying services they were not permitted by law to perform. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (f).

50. The Tenth Cause for Discipline alleged that respondent failed to provide a written contract that complied with the requirements of Business and Professions Code section 8759 to Mr. McGrath prior to performing the land survey in violation of Business and Professions Code section 8780, subdivision (d). An "invoice" from DM Consultants was prepared for the work on Polson Circle. There was no evidence that Mr. McGrath signed the invoice. The Invoice did not comply with the requirements of section 8759. Respondent admitted this violation. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (d).

51. The Eleventh Cause for Discipline alleged that respondent failed to prepare a survey map of the Polson Circle property in violation of Business and Professions Code section 8761 and 8780, subdivision (d). Section 8761 authorizes a licensed land surveyor to prepare maps and requires the prepared maps to contain certain information, including the surveyor's name and license number. Respondent claimed he was unaware that Mr. Licea had begun a survey of the Polson Circle property. Mr. Licea falsely represented that Mr. McGrath decided not to go ahead with the survey. In fact, Mr. Licea performed a flawed survey; he provided Mr. McGrath with a detailed Construction Limits Survey; and he returned Mr. McGrath's fees when Mr. Rinehart discovered the flaws in his survey. These facts notwithstanding, Mr. Licea provided a survey map to Mr. McGrath that purportedly contained respondent's seal and signature. The facts do not support a finding that respondent failed to file a survey map of the Polson Circle property.

52. The Twelfth Cause for Discipline alleged that respondent failed to file a Corner Record for the Polson Circle property within 90 days of the survey in violation of Business and Professions Code section 8765, subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c). The construction limits survey of the Polson Circle property that Mr. Licea prepared is dated November 9, 2009. On August 25, 2010, respondent advised the board that he set the corners on the Polson Circle property and filed a Corner Record. Respondent did not file the Corner Record within 90 days of the November 9, 2009 survey. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8765, subdivision (d) and California Code of Regulations, title 16, section 464, subdivision (c).

53. The Thirteenth Cause for Discipline alleged that respondent failed to set sufficiently durable monuments in his survey of the Polson Circle property in violation of Business and Professions Code sections 8771 and 8780, subdivision (d). The construction limits survey was not intended to be filed with the County Surveyor and was not filed. Mr. McGrath did not appear at the hearing and did not establish that respondent failed to do work he had contracted to perform. The evidence supports a finding that the nails Mr. Licea set were not intended to be permanent monuments. The Corner Record that respondent filed in 2010, indicates that monuments were set. No evidence was submitted regarding the durability of the

monuments set. The evidence does not support a finding that respondent failed to set sufficiently durable monuments.

54. The Fourteenth Cause for Discipline alleged that respondent failed to tag monuments in his survey of the Polson Circle property in violation of Business and Professions Code sections 8772 and 8780, subdivision (d). The construction limits survey was not intended to be filed with the County Surveyor and was not filed. Mr. McGrath did not appear at the hearing, and the evidence did not establish that respondent failed to do work he contracted to perform. The evidence supports a finding that the nails Mr. Licea set were not intended to be permanent monuments. The Corner Record respondent filed in 2010, indicates that monuments were set. No evidence was submitted to establish whether the monuments were properly tagged. The evidence does not support a finding that respondent failed to tag monuments.

55. The Fifteenth Cause for Discipline alleged that respondent failed to maintain responsible charge in violation of Business and Professions Code section 8780, subdivision (h), and California Code of Regulations, title 16, section 404.2. As described above, respondent claimed he did not know that Mr. Licea was doing surveying work at Polson Circle, but his lack of awareness was due to his mistaken belief that he did not need to supervise construction staking. Respondent failed to appreciate and fulfill his responsibilities and obligations as responsible charge. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (h).

Santa Clara Avenue, Santa Ana, California Project

COMPLAINT TO THE BOARD AND THE BOARD'S INVESTIGATION

56. David E. Woolley has been a licensed land surveyor since 1996. He is a principle in his firm, DWD Woolley & Associates. Mr. Woolley testified at the hearing.

57. In July 2010, Mr. Woolley's firm was contacted by a property owner on Santa Clara Avenue and asked to give an estimate for a survey. The property owner had a copy of a previous survey of an adjacent property dated February 8, 2010, that indicated it had been prepared by MLM Engineering and approved by "MS." Mr. Woolley researched the adjacent property but did not locate a Record of Survey or Corner Record corresponding with the survey conducted by MLM. Mr. Woolley did not go to either property.

58. Mr. Woolley determined that the subdivision map that included Santa Ana Avenue did not close and, because of that, a survey would require a lot of field work and the preparation and filing of a Record of Survey of, potentially, the entire subdivision. If Mr. Woolley's firm were to do the work, it would require his firm to find the error in the original 1923 subdivision map; find the cause of the error; isolate the error; and then document it. Mr. Woolley found the 1923 map was off by approximately one-half of a foot outside the acceptable limits. Mr. Woolley testified that property owners could voluntarily agree to resolve a boundary discrepancy. If they could not agree on a resolution, they would have to file a civil action to have a court determine where the disputed boundary should lie.

59. On July 27, 2010, Mr. Woolley contacted MLM Engineering by e-mail, attached a copy of the survey he possessed, and asked whether the survey was prepared by MLM. Respondent returned Mr. Woolley's e-mail and indicated he was waiting for a call from his client to set the corner and file a Corner Record.

60. Mr. Woolley and respondent engaged in subsequent e-mail discussions in late July and early August 2010. Mr. Woolley advised respondent that he had discovered that the original map did not close.¹¹ He noted that the County Surveyor was not likely to allow a Corner Record where the map did not close, suggesting that a Record of Survey would be required. Respondent asked Mr. Woolley what monuments were found and whether Mr. Woolley was able to locate the cause of the error. Respondent stated that the error did not affect the lot respondent was surveying because that lot closed "within a few huns."¹² Mr. Woolley clarified that he did not do any measurements on the subdivision but that he determined the lots did not close, and it would cost several thousands of dollars to perform a boundary survey of the entire block and file a Record of Survey. Mr. Woolley suggested "this will go to our local [Joint Professional Practices Committee (JPPC)], they are nice guys and will help you clear this matter up."

In the e-mail exchanges, respondent questioned Mr. Woolley about the issue he repeatedly raised with the board – whether "anyone who sets a line stake should file a Record of Survey." He noted that large construction companies do not file Records of Survey each time they set a stake. Respondent suggested that Mr. Woolley take this issue up with the JPPC to "preserve the jobs of hundreds of surveyors." Respondent also questioned Mr. Woolley about paint marks he observed on the sidewalk near his client's property. He suggested that Mr. Woolley, being aware of errors in a subdivision map, was "obliged to file a record of survey base[d] on the type of error you describe, since you cannot or will not specifically let me know what it is, I do not have the same knowledge." He continued, "Please let me know if you intend to follow the law, or do I need to take this to State dept. of consumer affairs?"

In response, Mr. Woolley opined that a surveyor who sets a line that triggers the section of the Professional Land Surveyors Act that requires the filing of a Record of Survey is required to file a Record of Survey. Mr. Woolley advised respondent, among other things, that the purpose of his communications with respondent was to "politely [ask] that you file a record of survey rectifying the block." Respondent apparently took Mr. Woolley's e-mail as an affront and responded as follows:

I will sue you, your company and the association for attempting to restrict competition by harassment. I don't know if your

¹¹ The 1923 subdivision map provided dimensions for some lots where, when drawn out, the boundary lines did not meet at the four corners.

¹² Boundary lines can be off by a small amount without a finding that the parcel did not close.

E&O will cover this. I don't say this to threaten you, I merely state a fact, I believe your intent is to stifle competition by finding ways to use the government to persecute those whose price you cannot or will not match in the marketplace. As you know, the Act is sufficiently obscure that a decent attorney would render it mute, and that would be too bad, because I would not bring it up, but your attorney would in defense of your allegedly malicious acts. I recommend you seek legal counsel, as I have, before you proceed with your admittedly punitive attempts.

In another e-mail, respondent accused Mr. Woolley of "working in concert with others to force records of survey to be filed when performed by other surveyors working in your market I also believe that you, by you meeting and working with other surveyors to selectively restrict competition in your market, will in fact, trigger the RICO act."

By e-mail dated August 17, 2010, respondent sent Mr. Woolley an invoice for \$4,350 "for the work needed to rectify and defend against damages caused by your actions against myself." Respondent continued to accuse Mr. Woolley of holding secret meetings to conspire to limit competition among land surveyors. He then cited to biblical scripture.

61. Roger Frank has been a California licensed land surveyor since 1975. He is also licensed by at least five other states, and he is a certified federal surveyor. He has volunteered as the Joint Professional Practices Committee – Orange County (JPPC) Chairman for about 12 years. The JPPC was formed to encourage engineers and land surveyors to perform in accordance with state laws and regulations. The JPPC works closely with the County Surveyor's office. If a concern about a land surveyor is brought to JPPC's attention, Mr. Frank reaches out to the surveyor in an attempt to resolve the issue. If the surveyor does not respond, or if a resolution cannot be reached, the JPPC will refer the matter to the board.

62. By letter dated August 16, 2010, Mr. Frank, in his capacity as Chairman, JPPC, advised respondent that the JPPC had been notified of concerns regarding work he performed on the Santa Clara Avenue project. The committee reviewed the "sketch or plat" prepared by MLM Engineering and the 1923 subdivision map of the tract and considered the homeowner's reported statements. The committee was aware that MLM's website showed that respondent was MLM's surveyor in responsible charge. After investigating the project, the committee concluded:

MLM's survey did not comply with tagging requirements;

MLM, and respondent as responsible charge, failed to file a required Record of Survey;

MLM's survey did not comply with signing and sealing requirements;

The required survey records were not filed within 90 days after completing the field survey;

MLM wrongfully advised a client that the client could choose between an unrecorded survey or a recorded survey

The JPPC-OC requested that respondent provide a response "with a rectification plan" within 30 days. Respondent did not respond to the JPPC.

63. On August 30, 2010, the board received a complaint from Mr. Woolley against respondent. Mr. Woolley has filed in excess of 30 complaints with the board and JPPC about other land surveyors.

64. The complaint was the result of Mr. Woolley's conversations with respondent regarding the Santa Clara Avenue project, and it alleged that respondent set untagged monuments; failed to file a record of survey or Corner Record; performed services without a written contract; and failed to sign and seal documents provided to the property owner.

65. On September 22, 2010, Mr. Frank, on behalf of the JPPC, wrote to respondent confirming that respondent had not contacted the JPPC about its concerns relating to the Santa Clara Avenue property. Mr. Frank advised that if the JPPC did not hear from respondent within 30 days, the JPPC would ask the board to investigate the situation.

66. On September 23 and 24, respondent and Mr. Frank exchanged e-mails. In a lengthy e-mail, respondent repeated his claim that he was being discriminated against in order to "curtail competition with the jurisdiction of your company and members of your organization." Mr. Frank responded to some of the questions raised in respondent's e-mail. As related to when a Record of Survey is not required, Mr. Frank agreed it was not necessary to file a Record of Survey when there were no material discrepancies between the survey conducted and established records and the surveyor locates sufficient recorded monuments to establish the location of property corners, provided that a Corner Record must be filed for any property corners that are reset. However, he pointed out that the mathematical calculations for the Santa Ana Avenue properties showed that the lots did not close "by substantial amounts" and the map MLM prepared noted only one recorded monument on the property. Therefore, Mr. Frank believed the survey did not fall within the exceptions to filing a Record of Survey. Respondent disagreed that the lot he surveyed did not close and again accused Mr. Frank of attempting to stifle competition and push prices higher. Mr. Frank did not respond further to respondent's allegations.

67. On October 11, 2010, Ms. Doering notified respondent that Mr. Woolley's complaint was filed. She requested respondent to provide a written response to the allegations. Respondent promptly responded on October 14, 2010. He included in his

response what he described as an electronic contract with the Santa Clara Avenue homeowner to “set a two point construction line along the west property line.” He advised Ms. Doering that the survey was not completed because debris in a portion of the property prevented him from accessing a corner monument. After the debris was removed, respondent still was not able to find the corner monument. He stated that he set a monument to which he attached his license number and filed a Corner Record with the Orange County Land Surveyor. The map was returned to respondent on September 30, 2010, with a request for corrections. Respondent advised Ms. Doering that a signed and sealed copy of the map would be provided to the homeowner when the Corner Record was recorded.

68. On December 3, 2010, the JPPC of Orange County wrote to the board and expressed its concerns about respondent’s Santa Clara Avenue survey. The JPPC suggested respondent committed several violations in the survey.

69. On January 3, 2011, Ms. Doering wrote to respondent. She noted that the Corner Record filed for the Santa Clara Avenue project was returned for corrections in September, 2010. Ms. Doering requested an update on the status of that Corner Record.

70. As with the Polson Circle survey, respondent advised Ms. Doering that he revised the Corner Record and returned it to the County Surveyor with a request to record the document as is.

71. By e-mail sent June 20 2011, Ms. Fernandez asked respondent for the status of the Corner Record. Respondent’s e-mail regarding the map was unclear, but he suggested he was asking the County Surveyor to file the map as is.

EXPERT EVALUATION – PATRICK SAVAGE

72. In July 2011, the board retained Mr. Savage as a technical expert to review and evaluate the surveying work performed on the Santa Clara Avenue project. Mr. Savage compared the plat map, the Corner Record respondent submitted, and the 1923 subdivision map filed by the developer. He also reviewed the board’s files, including respondent’s submissions; he did not visit the property. Mr. Savage observed that respondent did not submit research materials, field notes or other description of the work he performed.

Mr. Savage opined that the “electronic contract” used by respondent did not satisfy the requirements of a contract in accordance with the Professional Land Surveyors Act. He found that the electronic contract did not include the name, address and license number of the licensed land surveyor; it did not contain a description of a procedure to accommodate additional services; and it did not contain a procedure to terminate the contract. Although the contract did not comply with the Act, Mr. Savage determined that it was a written contract and, therefore, the assertion that respondent performed work without a written contract was not substantiated. Mr. Savage also determined that the allegation that respondent offered to provide an unrecorded survey for one price and a recorded survey for another price was not substantiated.

Mr. Savage reviewed the plat map prepared by MLM, for which respondent accepted responsibility. He stated that a land surveyor was required to sign and seal all work product, whether it was for a private client or was to be filed with a county surveyor. Mr. Savage opined that, if the plat map was presented to respondent's client, respondent violated the Act because the map was not signed and stamped. Mr. Savage also stated that the plat map was incomplete. The many deficiencies in the map make "it impossible to determine if the line has been located properly."

Mr. Savage noted that respondent filed a Corner Record with the Orange County Surveyor in August 2010, after respondent's communications with Mr. Woolley, but before the board notified him of the complaints filed against him. The Corner Record map was more detailed than the plat map. A Corner Map is required to be filed within 90 days of setting the corner. Respondent did not comply with this requirement.

Mr. Savage stated the County Surveyor returned the Corner Record to respondent for corrections. Mr. Savage noted that the "check letter" from the County Surveyor did not state that respondent was required to file a Record of Survey. Mr. Savage stated that Corner Records that show small differences in measured distances or bearing from record dimensions are often accepted for filing. Mr. Savage wrote in the report he prepared that "The amount of difference that is acceptable can vary. The size and location of the parcel of land, and land use are factors that are considered when evaluating these discrepancies from record dimensions." He also noted that the fact that the County Surveyor did not require a Record of Survey could suggest the County Surveyor's Office did not agree with the complainant's position that respondent was required to file a Record of Survey, or it could be that the County Surveyor's Office would require that a Record of Survey be submitted after the Corner Record was resubmitted.

Mr. Savage found errors in the dimensions of some lots shown on the original subdivision map. He found that "Calculations made from the bearings and distances around the lots do not form mathematically closed figures." He noted that this sometimes happens in older maps where the surveyors used complicated geometry and did not have access to modern surveying equipment.

Mr. Savage opined that the Corner Record that respondent filed complied with the Act when he set a durable tagged monument to mark the end of a boundary line. Mr. Savage also found that three intermittent points respondent set along the line were temporary and complied with the Act. Mr. Savage determined that respondent violated the standard of practice when he failed to place his tag on the recorded monument he located. Monuments that have been accepted as marking a property line should be tagged to aid subsequent surveyors in identifying the monument as the point referenced on the survey.

RESPONDENT'S POSITION

73. MLM Engineering was respondent's company. Customers could contact respondent through MLM's website. The owner of the Santa Clara Avenue property

contacted respondent through the MLM website. The customer said he needed points staked for the construction of a garage. Although he had an electronic contract, respondent admitted that the contract did not meet the board's requirements. Respondent personally went to the property to perform the work.

74. Respondent testified that parcels in old maps often do not close perfectly. The land surveyors drawing the old maps did not have the technology that is available today to achieve closure. According to respondent, dealing with the errors is what land surveyors do. Even amongst land surveyors there can be a difference of opinion about what should be done to correct map errors. Respondent suggested a land surveyor should try to determine the intent of the map; for example, do all the lots have 90 degree corners. If the lot cannot possibly have a 90 degree corner, the land surveyor may need to distribute the error equally amongst the adjacent parcels or lots in a subdivision.

75. Respondent found an iron pipe tagged by a surveyor with a very low license number. From that, he assumed the surveyor was around when the lot was developed. Respondent determined the older monument was persuasive evidence of the intended corner of the lot and he used that marker in his survey. If someone disagreed with his survey, they would be required to raise the challenge in a court of law to settle the issue. Respondent again relied on his interpretation of Policy Resolution #96-03 to support his position that he was not required to file a Corner Record because he was relying on a previously established boundary line to determine a construction line for a garage. At the hearing, he acknowledged that he understood that Policy Resolution 96-03 had been rescinded and was not authority for his position.

Respondent set three temporary monuments; he did not believe he was required to tag them. He also saw an untagged monument that he believed he was not required to tag. Respondent also relied on a board letter dated August 2, 1990,¹³ that stated that a surveyor was not required to tag a monument that the surveyor had not set, even if the monument was not tagged by the person who set it, unless the monument does not appear on a record of survey previously filed with the County Surveyor. In that case, the surveyor must file a Record of Survey to disclose the existence of the undocumented monument. The 1990 letter was not in effect in 2010. At the hearing, respondent testified that he was not certain whether an untagged monument must be tagged by a surveyor who uses the monument.

Respondent believed that if there is a material discrepancy between what the land surveyor measures and what is on the ground or on an established line, and the surveyor places structures on that line, the surveyor must file a Record of Survey. He believed that if the surveyor merely retraced a recorded line and placed temporary points on the line, the surveyor was not required to file a Corner Record. He now understands that a Corner Record should be filed under all those circumstances. Respondent asserted that some of his confusion was a result of different counties having different standards and/or requirements.

¹³ The letter was confirmed to be in effect at least until April 2005.

76. Respondent gave the property owner a sketch of the property that denoted the points he determined along the boundary line. He admitted that he should not have given the client the map without stamping and signing it.

77. Respondent testified that he is not a member of the JPPC and contended he was under their authority.

78. On May 29, 2014, a few weeks before the hearing, respondent e-mailed Mr. Woolley and apologized for his “error in believing [a Corner Record] only needed to be filed when setting actual corners.” Respondent stated that he had spoken to two respected land surveyors who told him he was wrong. He wrote that he “truly did not know” the requirements and was told by one of the surveyors that “it was my own fault for not going on the board’s website occasionally and keeping up [with] the enforced regulations.” Respondent further wrote, “I was wrong to discredit what you wrote, I hope you accept my apology.” The tone of respondent’s e-mail was measured and contrite.

EVALUATION OF THE CAUSES FOR DISCIPLINE CONCERNING SANTA CLARA AVENUE

79. The Sixteenth Cause for Discipline alleged that respondent was negligent in the practice of land surveying in violation of Business and Professions Code section 8780, subdivision (b), by “providing services in a manner that did not comply with the provisions of the Professional Land Surveyors Act.”¹⁴ As discussed in detail above, respondent belatedly admitted that he was required to file a Corner Record in conjunction with his survey of the Santa Ana Avenue property. He also failed to recognize that the lots in the subdivision did not close mathematically and required that he perform additional surveys. Cause exists to discipline respondent’s license for the violation of Business and Professions Code section 8780, subdivision (b).

80. The Seventeenth Cause for Discipline alleged that respondent failed to provide a written contract that complied with the requirements of Business and Professions Code section 8759, subdivisions (a)(3), (4) and (5), prior to performing the land survey in violation of Business and Professions Code section 8780, subdivision (d). Respondent admitted this violation. Cause exists to discipline respondent’s license for the violation of Business and Professions Code section 8780, subdivision (d).

81. The Eighteenth Cause for Discipline alleged that respondent failed to include his name, license number, seal and stamp on the plat map he prepared for the Santa Clara Avenue property in violation of Business and Professions Code sections 8761, subdivision (d), and 8780, subdivision (d). Respondent admitted he gave the property owner a sketch of the

¹⁴ Several Causes for Discipline relating to the Santa Clara Avenue property refer to “paragraph 36.” Paragraph 36 of the Accusation does not refer the Santa Clara Avenue property but relates to respondent’s failure to tag monuments on the Polson Circle project. The reference to paragraph 36 is deemed to be a typographical error and was intended to refer to paragraph 38.

property that denoted the points he determined along the boundary line without including the required information. Cause exists to discipline respondent's license for the violation of Business and Professions Code sections 8761, subdivision (d), and 8780, subdivision (d).

82. The Nineteenth Cause for Discipline alleged that respondent failed to file a Corner Record for the Santa Ana Avenue property within 90 days of the survey in violation of Business and Professions Code section 8765 subdivision (d), and California Code of Regulations, title 16, section 464, subdivision (c). A plat map respondent prepared and provided to his client was dated February 8, 2010. Respondent filed a Corner Record in August 2010, well past the 90 day requirement. Cause exists to discipline respondent's license for the violation of Business and Professions Code sections 8765, subdivision (d), and 8780, subdivisions (d) and (h) and California Code of Regulations, title 16, section 464, subdivision (c).

Scott Street, Morro Bay, California

COMPLAINT TO THE BOARD AND THE BOARD'S INVESTIGATION

83. On January 12, 2011,¹⁵ the board received a complaint against Mr. Licea from Land Surveyor Michael Stanton on behalf of homeowner John Barta, Mr. Stanton's client, relating to a boundary survey performed on property on Scott Street in Morro Bay. Mr. Stanton wrote that, in or around August 2009, Mr. Barta's adjacent neighbor, Arlene Savage,¹⁶ hired Mr. Licea to perform a survey of the common boundary between her and Mr. Barta's properties. Mr. Licea surveyed the property and set an untagged monument to mark the front corner. Mr. Stanton asserted that a monument marking the front corner of the lot already existed and had been set by a licensed land surveyor in 1986. The 1986 monument was documented in a Record of Survey filed with the County Surveyor. The 1986 monument provided a different boundary line than the one Mr. Licea set. Based upon Mr. Licea's survey, Ms. Savage constructed a fence between her and Mr. Barta's properties. The "new fence ran just a few inches from the edge of Mr. Barta's house." Mr. Barta hired Mr. Stanton to perform a survey of his lot. Mr. Stanton found original monuments that were overlooked or ignored by Mr. Licea. He reviewed the recorded map and found that the monuments he located were consistent with the recorded map. He determined that the true corner of the lot was 3.41 feet away from the monument Mr. Licea set. Mr. Stanton filed a Record of Survey with San Luis Obispo County. He determined that most of Ms. Savage's fence encroached on Mr. Barta's property. Mr. Stanton stated that both property owners incurred unnecessary costs as a result of Mr. Licea's survey. Mr. Stanton found no evidence that Mr. Licea was licensed or that he was supervised by a licensed land surveyor. Mr. Stanton requested that Mr. Licea be barred from performing any surveys until he is licensed.

¹⁵ The "received" stamp shows the date "Jan 12, 2010;" however, the complaint is signed by Mr. Stanton on January 8, 2011. It is determined that the received stamp contains the incorrect year.

¹⁶ The board noted Ms. Savage was not related to the board's expert Patrick Savage.

84. The board advised Mr. Licea of Mr. Stanton's complaint and requested that he provide a response to the allegations. On February 10, 2011, Mr. Licea signed an affidavit stating that he was the party chief assigned by DM Consultants to perform the survey of Ms. Savage's property in Morro Bay. He stated that he was, and is, directly supervised by a licensed land surveyor and registered civil engineer when he performs surveys. He identified respondent as the licensed land surveyor who supervised his survey of Ms. Savage's property.

85. On March 11, 2011, April 19, 2011, and June 20, 2011, Ms. Fernandez wrote to respondent to advise him of Mr. Stanton's complaint and to request that he provide a response to the allegations. Respondent did not respond to the board's inquiries.

EXPERT EVALUATION – PATRICK SAVAGE

86. In July 2011, the board retained Mr. Savage as a technical expert to review and evaluate the surveying work performed on the Scott Street project. Mr. Savage reviewed the board's files, including Mr. Stanton's complaint and Mr. Licea's submission; he did not visit the property. Mr. Savage observed that neither respondent nor Mr. Licea submitted research materials, field notes or other description of the work that was performed in the survey of Ms. Savage's property. He determined that the plat map that Mr. Licea or respondent prepared contained "several errors and omissions."

Mr. Savage noted that respondent or Mr. Licea should have researched the recorded documents regarding this property. He testified that a surveyor can misidentify and misinterpret a monument if he or she does not perform the required research. It is possible to find records from a variety of decades to compare and to use to determine how the points on the ground relate to the records.

Mr. Savage opined that respondent failed to comply with the standard of care in a number of ways, including:

Failing to submit notes, records or documents to indicate how the points and lines on the plat map were established;

Failing to supervise Mr. Licea and permitting him to use respondent's name and seal in connection with a survey that was performed without his supervision;

Permitting a survey to be performed without a signed contract in place;

Failing to file a Corner Record or Record of Survey.

Mr. Savage also found that Mr. Licea failed to properly conduct the survey and failed to tag the corner he set.

RESPONDENT'S POSITION

87. Respondent denied any knowledge of the Scott Street project. He testified that he first learned of the project from the board. He stated he never went to the property. He stated that he filed a disassociation from DM Consultants "around that time." Respondent spoke to Mr. Licea about the project after he was notified of the complaint to the board. Mr. Licea told him it was a construction staking job. Respondent did not get paid for the project and did not supervise Mr. Licea because he did not know about the project. Respondent did not give Mr. Licea permission to use his license whenever he wanted. Respondent did not file a Corner Record on the project. He denied preparing a map for the Scott Street property.

88. Respondent stated that he did not sign the map for the Scott Street project. He pointed out that his first and last names were misspelled on the stamp on the Scott Street map. He denied ever ordering a stamp that was misspelled. He stated that anyone could order a stamp, and he believes they can be ordered electronically.

89. Respondent said that, after he received the complaint from the board, he contacted the County Surveyor, who told respondent a Corner Record was not required. Respondent submitted an e-mail chain dated July 15, 2011, in which he asked Doug Rion, County Surveyor, to confirm that a Corner Record was not required to be filed on the Scott Road property. Respondent's e-mail represented that "We set no monumentation at the site and the monumentation found is accepted in situ per RS 51/75." Mr. Rion responded, "Results of the survey of said property, as described below do not require a Corner Record to be filed."

90. Respondent was very upset with Mr. Licea for using his name and performing work without his knowledge. Because he was not aware of the work being performed, respondent did not believe that he failed to perform his required duties. He denied he was responsible for failing to file a Record of Survey. He admitted a Corner Record was not timely filed, if one was required. He stated that if he had been involved in the project, he would have filed a Corner Record. He denied responsibility for failing to tag monuments or maintaining responsible charge. He admitted that, because he was the responsible charge, he unknowingly aided and abetted Mr. Licea in the unlicensed practice of land surveying. He denied any responsibility for the use of a non-compliant contract because he had nothing to do with the contract.

TESTIMONY OF SUSANNE SHAPIRO

91. Susanne Shapiro has been a graphologist and handwriting expert since 1985. She attended classes at Valley College in Los Angeles from 1980 to 1981. She has remained in constant private study. She has analyzed hundreds of handwriting samples for private parties and for organizations.

92. Ms. Shapiro examined two known samples of respondent's signature¹⁷ and compared them to the plat map bearing a stamp in which respondent's name is misspelled and what is purported to be his signature. She determined that the signatures on the known samples were "very different" from the signature on the plat map. She opined that the signature on the plat map was "made by someone other than Michael A. Sanchez."

EVALUATION OF THE CAUSES FOR DISCIPLINE CONCERNING SCOTT STREET

93. The Twentieth Cause for Discipline in the Accusation alleged that respondent "misrepresented the facts in his practice of land surveying" in violation of Business and Professions Code section 8780, subdivision (a), by misrepresenting his role as the responsible party.¹⁸ Respondent testified that he had no knowledge of the Scott Street project; however Mr. Licea performed the Scott Street survey on August 15, 2009, when respondent was the responsible charge for DM Consultants. Respondent said he learned from Mr. Licea, after the fact, that the project was for construction staking which, at the time, respondent did not believe required his oversight. The evidence supports a finding that respondent was lax in his supervision of the land surveying work done by others under his license. In fact, the Scott Street project necessitated finding property boundary lines and required the oversight of a licensed land surveyor. There was no evidence that respondent spoke to Ms. Savage; however, it is unquestionable that she relied on the competence of DM Consultants as licensed surveyors to perform the survey of her property as she built a fence on the line depicted on the map she received. Ms. Savage and the adjacent property owner incurred additional expenses to obtain a new survey and remove and reposition the fence. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (a), because he was the responsible party.

94. The Twenty-First Cause for Discipline alleged that respondent was negligent in the practice of land surveying in violation of Business and Professions Code section 8780, subdivision (b), by preparing a map that contained errors and deficiencies and by failing to include necessary measurements; failing to accurately locate the property line; setting sub-standard monuments; failing to adequately supervise Mr. Licea; and failing to keep adequate notes and records of his survey. Respondent was the responsible charge for DM Consultants when Mr. Licea conducted the survey of the Scott Street property and, as such, is held responsible for the conduct of his subordinates who provide surveying services under his license. In this case, respondent adamantly denied he prepared a map for the Scott Street property. The map produced contained a stamp with respondent's first and last names

¹⁷ A third sample was an enlarged version of the second sample.

¹⁸ Several Causes for Discipline relating to the Scott Street property refer to "paragraph 43." Paragraph 43 of the Accusation does not concern the Scott Street. The reference to paragraph 43 is deemed to be a typographical error and intended to refer to paragraph 45.

misspelled.¹⁹ The signature block on the map contained the correct spelling of respondent's name, but a handwriting expert testified that the document was not signed by respondent.²⁰ On these facts, the evidence supports a finding respondent did not prepare, sign or stamp the Scott Street project map and that his signature and stamp were forged. Although respondent was the responsible charge, in this case it is determined that Mr. Licea's actions thwarted respondent's ability to fulfill his obligations as responsible charge. On these facts, cause does not exist to discipline respondent's license for a violation of Business and Professions Code section 8780, subdivision (b).

95. The Twenty-Second Cause for Discipline alleged that respondent aided and abetted DM Consultants and Mr. Licea in the unlicensed practice of land surveying in violation of Business and Professions Code section 8780, subdivision (f). Respondent claimed he did not know that Mr. Licea was doing surveying work at Scott Street, but he did not know partly because he mistakenly believed he did not need to supervise construction staking. Respondent's failure to know his responsibilities and obligations as responsible charge allowed Mr. Licea and DM Consultants to provide surveying services they were not permitted by law to perform. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (f).

96. The Twenty-Third Cause for Discipline alleged that respondent failed to provide a written contract that complied with the requirements of Business and Professions Code section 8759, subdivisions (a)(4) and (5), for the land survey services provided on the Scott Street property in violation of Business and Professions Code section 8780, subdivision (d). An unsigned "Invoice" for services was submitted in evidence.²¹ The invoice does not comply with the requirements of the Professional Land Surveyors Act; however, respondent convincingly disavowed any connection to the invoice. Cause does not exist to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (d).

97. The Twenty-Fourth Cause for Discipline alleged that respondent failed to prepare a survey map of the Scott Street property in violation of Business and Professions Code section 8761 and 8780, subdivision (d). Section 8761 authorizes a licensed land surveyor to prepare maps and requires the prepared maps to contain certain information, including the surveyor's name and license number. Respondent claimed he was unaware of Mr. Licea's actions. The stamp on the map misspelled respondent's name and a handwriting expert testified

¹⁹ It is noted that the map also states that the survey was made on "Agu 15, 2009." Agu is not typically used to abbreviate "August." No evidence was presented regarding this point.

²⁰ Incongruously, respondent did not denounce the map prepared by Mr. Licea for the Polson Circle project that also included a stamp with respondent's name misspelled, and accepted responsibility for Mr. Licea's actions. With regard to the Scott Street project, respondent did not accept responsibility.

²¹ It is noted the invoice contains a misspelling of respondent's first name.

that the signature on the map was not respondent's. Despite the fact that respondent was in responsible charge, respondent's name was used improperly and Mr. Licea acted without proper authority by contracting for, and performing the land survey on the Scott Street property. Based on these facts, the evidence does not support a finding that respondent failed to file a survey map.

98. The Twenty-Fifth Cause for Discipline alleged that respondent failed to file a Corner Record for the Scott Street property within 90 days of the survey in violation of Business and Professions Code section 8765, subdivision (d) and California Code of Regulations, title 16, section 464, subdivision (c). In light of the facts that respondent's name was used improperly and that Mr. Licea acted without authority to contract for or perform the land survey on the Scott Street property, the evidence does not support a finding that respondent failed to timely file a Corner Record. In addition, respondent submitted evidence that the County Surveyor confirmed that a Corner Record was not required under the circumstances respondent described.

99. The Twenty-Sixth Cause for Discipline alleged that respondent failed to tag monuments in his survey of the Scott Street property in violation of Business and Professions Code sections 8772 and 8780, subdivision (d). In light of the facts that respondent's name was used improperly and that Mr. Licea acted without authority to contract for, and perform the land survey on, the Scott Street property, the evidence does not support a finding that respondent failed to tag monuments.

100. The Twenty-Seventh Cause for Discipline alleged that respondent failed to maintain responsible charge in violation of Business and Professions Code section 8780, subdivision (h), and California Code of Regulations, title 16, section 404.2. Although respondent's name was used improperly and Mr. Licea acted without authority to contract for, and perform the land survey on, the Scott Street property, respondent was in responsible charge for land surveying services performed by DM Consultants. The evidence supports a finding that respondent was lax in his supervision of Mr. Licea and that, in failing to supervise him adequately, respondent failed to maintain responsible charge. Cause exists to discipline respondent's license for the violation of Business and Professions Code section 8780, subdivision (h), and California Code of Regulations, title 16, section 404.2.

Record of Survey 06-235 – Barstow, San Bernardino County

COMPLAINT TO THE BOARD AND THE BOARD'S INVESTIGATION

101. On March 21, 2011, the board received a complaint against respondent from Michael Raihle,²² San Bernardino County Surveyor, alleging that respondent failed to timely resubmit a Record of Survey that the Surveyor's Office returned to him for corrections. Mr. Raihle advised the board that the County Surveyor's Office was in the process of "clean[ing]

²² Mr. Raihle has retired as the County Surveyor. Thomas Hearn, Mr. Raihle's successor, testified at the hearing.

up some of the older files from the private sector pertaining to unfinished Records of Survey and Corner Records that have sat stagnant for over a year.” He noted that his office attempted to contact the surveyors of record to resolve the issues but some had not responded to his office’s requests. Respondent was on a list with 26 other surveyors who had not responded.

102. By letter dated April 12, 2011, Tiffany Criswell, Enforcement Analyst, advised respondent of the County Surveyor’s complaint and requested that he respond to the allegations. By e-mail sent to the County Surveyor’s Office and copied to Ms. Criswell on April 15, 2011, respondent forwarded a corrected Record of Survey 06-235. Respondent’s note to the County Surveyor indicated that he thought he had already resubmitted the corrected survey.

103. Ms. Criswell confirmed with Mr. Raihle that the resubmitted map was received. In an e-mail sent October 25, 2011, Mr. Raihle advised Ms. Criswell that the resubmitted map had been returned to respondent for additional corrections on June 22, 2011. Respondent did not respond to the returned map.

104. In November 2011, Ms. Criswell contacted respondent regarding the re-filing of the Record of Survey. Respondent told Ms. Criswell that he had been dismissed from Calvada Environmental Services, Inc. (CES), the company under which he performed the survey. He questioned whether the map had been returned to the company’s address rather than his. Ms. Criswell provided this information to Mr. Raihle who stated he would re-send the map to respondent’s address.

105. In February 2012, Ms. Criswell contacted Mr. Raihle to obtain the status of the Record of Survey 06-235. Mr. Raihle advised her that he had just spoken to respondent and that respondent said his “CAD guy”²³ had been in an accident, which caused a delay in returning the map. Respondent represented the revisions would be completed soon. As of April 2, 2012, the County Surveyor had had no further communication from respondent concerning the map.

RESPONDENT’S POSITION

106. Respondent prepared Record of Survey 06-35 while doing work for CES. Respondent stated he was subsequently terminated from CES and was locked out of its offices, so he was unaware that the County Surveyor was sending notices about the map. Because the contract was with CES, respondent did not have the records and field notes concerning the property and was denied access to them.

107. Respondent admitted the map was not timely resubmitted.

²³ Computer-aided design and drafting software

108. On May 5, 2015, respondent submitted Record of Survey 06-35 to the San Bernardino County Surveyor's office. The original survey was performed in 2006. When respondent received the letter from the County Surveyor, he tried to complete the work that needed to be done. CES owners changed in the meantime, and the new owners were more receptive to respondent. He was then able to get the information he needed to finish the work. He did not contact the County to explain his situation and get more time to re-submit the Record of Survey, although he understood he could do that.

EVALUATION OF CAUSES FOR DISCIPLINE CONCERNING RECORD OF SURVEY 06-235

109. The Twenty-Eighth Cause for Discipline alleged that respondent failed to re-submit a Record of Survey within 60 days of the survey in violation of Business and Professions Code sections 8767 and 8780, subdivision (d). Respondent admitted the violation. Cause exists to discipline respondent's license for the violations.

Record of Survey 2009-1033 – Orange County

COMPLAINT TO THE BOARD AND THE BOARD'S INVESTIGATION

110. Respondent submitted Record of Survey 2009-1033 to the Orange County Surveyor in early 2009. On March 24, 2009, the County Surveyor returned the map to respondent asking him to include existing monumentation in his survey. Respondent re-submitted the Record of Survey on June 6, 2009. The County Surveyor returned the map again on February 18, 2010, and requested thirteen additional changes to the map. Respondent did not re-submit the map.

111. On May 7, 2012, the County Surveyor sent a reminder letter to respondent. Respondent did not respond to the County Surveyor's letter, and the County Surveyor referred the matter to the JPPC.

112. By letters dated June 28, 2012, and November 8, 2012, the JPPC asked respondent to resubmit the survey. Respondent did not respond to either of the JPPC's requests.

113. On May 23, 2013, the board received a letter from Mr. Frank on behalf of the Orange County JPPC advising the board that respondent failed to resubmit Record of Survey 2009-1003 to the Orange County Surveyor within the required 60 days despite requests from the County Surveyor and JPPC to do so.

114. On June 4, 2013, Ms. Fernandez wrote to respondent to advise him of JPPC's complaint and to request he provide a response to the allegations.

115. On July 1, 2013, respondent replied to the board’s letter.²⁴ He first blamed the county for his delay and stated that it was the county “which stretched out the process, we merely followed their lead.” He stated that he believed the JPPC got involved because his competitive pricing was taking business away from JPPC members. He explained that he believed the JPPC “was using [him] as a whipping boy because of the recession and their inability to compete with their high overhead and trophy wives but that [sic] Orange County, home of the John Birch Society [sic].”

Respondent’s letters and map provided to the board provided the following timeline regarding his submission of Record of survey 2009-1003:

November 24, 2008	respondent completed a survey and filed a Corner Record (per respondent)
February 10, 2009	County Surveyor rejected the Corner Record and required a Record of Survey (per respondent)
March 24, 2009	County mailed first map check letter (per county surveyor note on map)
June 6 2009	County received second Record of Survey submittal (per county surveyor note on map)
July 2009	County did a field investigation (per county surveyor note on map)
February 28, 2010	County returned the Record of Survey for corrections. (per respondent)
Nov 20, 2012	County received third Record of Survey submittal (per stamp on map)

Although respondent admitted he should have submitted the third map earlier, he asserted the timeline shows that “the county, not myself, initiated this tardiness.” He also alleged that the county violated the Land Surveyors Act and overstepped its authority in processing his maps.

116. On July 24, 2013, the board requested additional information from respondent

117. On July 31, 2013, respondent submitted the map for a fourth check. It was logged into the county’s tracking system on August 6, 2013. By an e-mail sent September 19, 2013, the county anticipated respondent would receive comments about the map in a week or two.

²⁴ The letter addressed Record of Surveys 2009-1033 and 2011-1078.

118. On August 5, 2013, the board received a letter from Ron Cote, Principal, R. C. Enterprise.²⁵ R. C. Enterprise is an engineering and survey drafting company that worked with respondent on Records of Survey 2009-1033 and 2011-1078. Mr. Cote stated that he was aware that the surveys were returned by the County Surveyor for corrections on several occasions. He stated that the corrections required were unrelated to the survey work but had to do with “simply cad operation.” He represented that he had done drawings for multiple counties in southern California and had “never seen these kind of remarks as redlines.” He also took responsibility for the lateness of the resubmissions because he was ill in 2012 and 2013. He further stated that he had computer problems in March 2013 that interfered with getting projects completed timely.

RESPONDENT’S POSITION

119. Respondent testified that he corrected the Record of Survey about three times, but he was not sure if the County Surveyor’s office had accepted the survey yet. Respondent admitted the submission of the map was not timely, but he asserted that the re-submissions were timely.

EVALUATION OF CAUSES FOR DISCIPLINE CONCERNING RECORD OF SURVEY 2009-1033

120. The Twenty-Ninth Cause for Discipline alleged that respondent failed to re-submit a Record of Survey within 60 days of the survey in violation of Business and Professions Code sections 8767 and 8780, subdivision (d). The timeline above demonstrates that respondent failed to timely re-submit the Record of Survey despite respondent’s assertion they were not late. Cause exists to discipline respondent’s license for the violations.

Record of Survey 2011-1078 – Anaheim, Orange County

COMPLAINT TO THE BOARD AND THE BOARD’S INVESTIGATION

121. Prior to July 25, 2011, respondent submitted Record of Survey 2011-1078 to the Orange County Surveyor. On July 25, 2011, the County Surveyor returned the map to respondent asking him to make corrections. Respondent did not re-submit the map within 60 days.

122. On January 10, 2012, the County Surveyor sent a reminder letter to respondent. Respondent did not respond to the County Surveyor’s letter, and the County Surveyor referred the matter to the JPPC.

123. By letters dated March 8, 2012 and June 28, 2012, the JPPC asked respondent to resubmit the survey. Respondent did not respond to the JPPC.

²⁵ Mr. Cote’s letter addressed Record of Surveys 2009-1033 and 2011-1078.

124. According to a stamp on Record of Survey 2011 – 1078, the County Surveyor received the re-submitted map on June 28, 2012. On August 14, 2012, the County Surveyor returned the map to respondent asking him to make additional corrections. On November 14, 2012, the County Surveyor sent a reminder letter to respondent. Respondent did not respond to the County Surveyor’s letter, and the County Surveyor referred the matter to the JPPC.

125. By letter dated January 21, 2013, Mr. Frank, on behalf of the JPPC asked respondent to resubmit the survey. Respondent did not respond to the JPPC.

126. On May 23, 2013, the board received a letter from Mr. Frank on behalf of the Orange County JPPC advising the board that respondent failed to resubmit Record of Survey 2011-1078 to the Orange County Surveyor for corrections within the required 60 days despite requests from the County Surveyor and JPPC.

127. On June 4, 2013, Ms. Fernandez wrote to respondent to advise him of JPPC’s complaint regarding Record of Survey 2011-1078 and to request that he provide a response to the allegations. Ms. Fernandez also noted that MLM Engineering did not have an Organization Record form on file with the board.²⁶

128. On July 1, 2013, respondent replied to the board’s letter. He asserted that the County Surveyor was either “lying or incompetent” when the County Surveyor represented that respondent did not resubmit the map. Respondent pointed to the map that was stamped received on June 28, 2012, in support of his position. Contrary to respondent’s assertion, the County Surveyor acknowledged receipt of respondent’s submission in June 2012. The June 2012 map was returned to respondent for further corrections. Respondent failed to respond to the County Surveyor’s request for further corrections until after he received the notice of complaint from the board.

129. On July 24, 2013, the board requested additional information from respondent.

130. On July 31, 2013, respondent submitted the map for a third review. It was logged into the county’s tracking system on August 6, 2013. By an e-mail sent September 19, 2013, the county anticipated respondent would receive comments about the map in a week or two.

131. On August 5, 2013, the county received an Organization Record Form in which respondent represented his business was a sole proprietorship.

²⁶ Neither the 2009 or 2011 map has the name “MLM Engineering” on it, but the letters sent by the County Surveyor, JPPC and the board to respondent reference MLM Engineering.

RESPONDENT'S POSITION

132. Respondent asserted that he timely submitted the original Record of Survey. He agreed that the re-submittals may have been untimely. He also stated he resubmitted the map several times. Respondent stated that he asked the County to file the map despite the request for corrections, but they did not file it.

EVALUATION OF CAUSES FOR DISCIPLINE CONCERNING RECORD OF SURVEY 2011-1078

133. The Thirtieth Cause for Discipline alleged that respondent failed to re-submit a Record of Survey within 60 days of a request for corrections in violation of Business and Professions Code sections 8767 and 8780, subdivision (d). The timeline above demonstrates that respondent failed to timely re-submit the Record of Surveys despite respondent's assertion they were not late. Cause exists to discipline respondent's license for the violations.

134. The Thirty-First Cause for Discipline alleged that respondent failed to file an Organization Record Form that identified his business name as MLM Engineering in a timely manner in violation of Business and Professions Code sections 8729, subdivision (i), and California Code of Regulations, title 16, section 463, subdivision (b). Respondent did not file an Organization Record Form until August 5, 2013. Cause exists to discipline respondent's license based on the failure to timely file the Organization Record Form.

Parcel Map – Murrieta

COMPLAINT TO THE BOARD AND THE BOARD'S INVESTIGATION

135. On December 22, 2011, the board received an e-mail from Richard Gunther asking whether AC Engineering Group, Inc., was licensed through the board. In a subsequent e-mail, Mr. Gunther stated that he was a licensed contractor and was aware that unlicensed contractors who advertised were subject to a large fine. He asked if the same was true for unlicensed engineers who advertised as engineers. The analyst assigned to respond to Mr. Gunther's e-mail researched the matter and learned that AC Engineering had not filed the required paperwork to notify the board that they were providing engineering services (civil, electrical and/or mechanical). The analyst represented that she wrote to AC Engineering to obtain further information.

136. During the investigation of AC Engineering, the board learned that AC Engineering Group advertised that they also provided land surveying services. On January 17, 2012, the board requested AC Engineering to complete an Organization Record form and return it to the board.

137. Civil engineer Edmond Vardeh signed an Organization Record form on January 24, 2012. The form indicated that President Rad Arsalan, an unlicensed individual, was the sole proprietor of the business and listed respondent as the responsible charge for

land surveying. Respondent signed the Organization Record form as the responsible charge for land surveying on February 4, 2012. The form was forwarded to the board.

138. By letter dated June 6, 2012, the board advised Mr. Vardeh and Mr. Arsalan that the Organization Record form did not comply with the laws governing engineering businesses in California because the corporation “must have corporate officers licensed to provide the services that the corporation is offering to provide.” Mr. Arsalan was the only corporate officer listed in the Organization Record form and he was not licensed as a professional engineer or land surveyor. A similar letter was sent to Mr. Vardeh and Mr. Arsalan at a different address on August 31, 2012.

139. Department of Consumer Affairs Investigator Mario Castro testified at the hearing. Mr. Castro was a police officer with the City of Arcadia for four months and has been an investigator with the Department of Consumer Affairs for five years. As an investigator, Mr. Castro investigates complaints on behalf of various California state agencies.

Mr. Castro was assigned to investigate Mr. Gunther’s complaint. Mr. Castro contacted Mr. Gunther to gather information. He obtained and reviewed relevant documents, which he discussed with witnesses and the named subjects of the complaint. He then prepared a report of his investigation that he provided to his supervisor. Once his report was approved, it was forwarded to the board.

140. Mr. Castro interviewed Mr. Arsalan. In the interview, Mr. Arsalan acknowledged that he offered engineering and land surveying services to the public. When he obtained a contract for land surveying work, he sub-contracted the work to respondent. He stated that AC Engineering stopped offering land surveying services in June 2013. In November 2013, AC submitted an Organization Record form that did not list any licensed engineers or land surveyors as having responsible charge for professional services.

141. Mr. Castro interviewed respondent on February 3, 2014. Respondent told Mr. Castro that in 2012, Mr. Arsalan asked him to be the responsible charge for land surveying services offered by AC. He admitted that he was never an owner or partner of AC. He stated he believed that, as responsible charge, all land surveying services provided by AC would go through him. Respondent stated that in 2013, he contracted with Mr. Arsalan to perform a land surveying job in Murrieta. He said he invoiced AC Engineering for his professional services and received an IRS 1099 from them. He did not provide any documents supporting this arrangement. When asked by Mr. Castro to provide documents, respondent asked to be compensated for locating the documents. When Mr. Castro refused, respondent asserted the request was an “unfounded request for documents [that was] without warrant and a violation of my right to due process.” He therefore determine to “recluse” himself from the investigation.

142. In an e-mail sent February 6, 2014, respondent wrote to Mr. Castro after his request to be reimbursed for his time:

OK, I guess it's nice to work for the government, getting paid regular and great retirement. I have about \$300 per mo coming in retirement thanks for the hand up. That day I had to meet with you I lost a potential \$300 I could have earned that means a lot to me these days. Your mama would be proud of you threatening me.

Why don't you do us all a favor, and figure out why only about 20% of all licensed surveyors are Hispanic, even though we are over 1/2 the state population. Maybe you can go watch the movie "Butler" and get a clue why Hispanics [sic] surveyors get paid so much less and are so few in number in California.

RESPONDENT'S POSITION

143. Respondent denied that he aided and abetted unlicensed individuals or an unlicensed company to perform tasks that require a land surveyor license. Respondent stated he thought AC Engineering was properly licensed. To the extent AC Engineering may have performed tasks that required a surveyor's license, he was not aware they were not properly licensed and may have unknowingly aided and abetted their unlicensed activities. Respondent did not check to see if AC Engineering licenses were valid.

144. As relates to having a written contract, respondent believed that if he was working under the jurisdiction of an engineering company, the contract for services would be between the engineering company and the property owner. Respondent believed he had a valid agreement with AC Engineering to provide land surveying services to AC Engineering's clients. He did not believe his actions constituted a failure to maintain responsible charge.

145. Respondent noted that he signed the 2012 Organization Record Form as a land surveyor in responsible charge on February 4, 2012. He also noted that he did not sign the 2013 Organization Record Form and was not listed as providing services to AC Engineering.

EVALUATION OF CAUSES FOR DISCIPLINE CONCERNING MURRIETA PARCEL MAP

146. The Thirty-Second Cause for Discipline alleged that respondent aided and abetted AC Engineering, Inc. in the unlicensed practice of land surveying in violation of Business and Professions Code section 8780, subdivision (f). AC Engineering was a corporation when respondent agreed to be the responsible charge for land surveying services. Respondent was required to be an officer of AC Engineering to enable it to provide land surveying services. Respondent was not an officer. Respondent is obligated to know the law and the requirements that apply in order for him to serve as a responsible charge. Cause exists to discipline respondent's license for aiding and abetting AC Engineering in the unlicensed practice of land surveying.

147. The Thirty-Third Cause for Discipline alleged that respondent failed to provide a written contract that complied with the requirements of Business and Professions Code section 8759 in violation of Business and Professions Code section 8780, subdivision (d). Respondent believed that he was not responsible for obtaining a contract because he was working under the umbrella of AC Engineering. However, as responsible charge, respondent was responsible to review the paperwork, determine whether the contract was sufficient, and determine whether the client properly authorized the work before he provided land surveying services. Cause exists to discipline respondent's license for failing to provide a contract to his client.

148. The Thirty-Fourth Cause for Discipline alleged that respondent failed to maintain responsible charge in violation of Business and Professions Code section 8780, subdivision (h). The Accusation did not allege, and no evidence was presented that established, that respondent failed to provide competent land surveying services related to the Murrieta Parcel Map. However, based on the findings that respondent aided and abetted AC Engineering in the unlicensed practice of land surveying and that respondent failed to provide a written contract to the client, cause exists to discipline respondent's license for failing to maintain responsible charge.

Character and Professional References

TESTIMONY OF CARL BETZ

149. Carl Betz has been a licensed land surveyor since 1985. He has known respondent since 1978, when they attended the Operation Engineer Apprentice Program together. Mr. Betz has performed over 2000 land surveys.

150. Mr. Betz and respondent were in business together from 1985 to 1992. Mr. Betz had many opportunities to observe respondent provide land surveying services. Respondent was the supervising surveyor for Mr. Betz's company, Metro Engineering, until Mr. Betz became licensed. When Mr. Betz became licensed, respondent expressed an interest in doing field work, so Mr. Betz oversaw the office. Mr. Betz never had a problem or concern with respondent or his work. Together they handled some of the biggest land surveying jobs in the Los Angeles area and the company grossed over \$1.8 million. Metro Engineering provided land surveying services for projects that included the Ronald Reagan State Office Building, the Atlas Coalinga Environmental Protection Agency, the Los Angeles Convention Center - the largest land surveying contract in Los Angeles at the time, and Century Freeway – the second largest contract given by Caltrans to a private contractor. Metro Engineering's office was destroyed in the Northridge earthquake; the company went out of business; and respondent moved from the area. Respondent and Mr. Betz did not work together or see each other as often after that, but they talked with each other as much as possible.

Mr. Betz contacts respondent when he has overflow work that needs to be performed. Mr. Betz's company was the official land surveyors for the Rose Bowl. Under that "very

large contract,” respondent provided competent land surveying services for the layout of the new press box at the Rose Bowl.

151. Mr. Betz was aware that respondent had financial problems during the recession. Additionally, he was aware that respondent’s son Mike was depressed and suicidal when he returned from the war and that respondent devoted a great deal of his time to trying to keep his son alive. Mr. Betz attributed respondent’s work problems to his inability to focus in the manner he had been able to do before his son’s difficulties and the poor economy. Mr. Betz knew that respondent lost his home due to financial problems.

152. Mr. Betz was familiar with the Accusation filed against respondent. Despite the allegations, Mr. Betz would welcome respondent to return to work for him.

TESTIMONY OF JOSEPH MINER

153. Joseph Miner is a licensed real estate appraiser and broker. In 2008-2009, Mr. Miner owned property adjacent to property that a popular local developer owned. The developer’s son significantly damaged Mr. Miner’s property with a bulldozer. Mr. Miner had difficulty finding a land surveyor to perform a survey for use in litigation against the developer because other surveyors were reluctant to work against the developer. Additionally, the developer’s son physically threatened Mr. Miner, and surveyors were unwilling to put themselves at risk doing the work. Respondent agreed to “go into the line of fire” and perform the survey that was to be used to establish damages in the litigation. Mr. Miner testified that the damage was not in a straight line and respondent was “very clever” in the techniques he used to assess the square footage of damage. He was satisfied with respondent’s work and felt he charged a fair price. Regardless of the Accusation against respondent, Mr. Miner would recommend respondent to others.

TESTIMONY OF RONALD G. LIVESAY

154. Respondent properly served a Notice of Intent to Introduce Affidavit of Ronald G. Livesay, and it was not opposed. Mr. Livesay resided in California until 2012. Mr. Livesay hired MLM and respondent to survey his property for a Lot Line Adjustment that Mr. Livesay was told was necessary to sell his home. Mr. Livesay stated that respondent performed the work “quickly and efficiently.” After the paperwork was submitted to Los Angeles County, the county requested that additional information be provided. Respondent responded quickly and went “above and beyond” in his efforts on [Mr. Livesay’s] behalf.” Mr. Livesay described respondent’s work product as “excellent” and stated that “we were very satisfied by the timely and professional manner in which [the work] was accomplished.” Mr. Livesay was familiar with the accusations against respondent and stated he would, nonetheless, “have no hesitation in wholeheartedly recommending [respondent] to others.”

Costs of Investigation and Enforcement

155. Complainant seeks to recover costs of investigation and prosecution in the amount of \$29,125.00 pursuant to Business and Professions Code section 125.3. The amount includes the sum of \$23,605.00 for costs already billed by the Attorney General's Office in preparation for the hearing and an additional estimated \$1,020.00 for costs expected to be incurred between the date the Certification of Prosecution Costs was signed and the commencement of the hearing, together with \$4,500.00 for expert consultant costs.

The Attorney General's Office submitted a Certification of Prosecution Costs with a Declaration of David E. Hausfeld that outlined the legal services provided to the board. The Certification of Prosecution Costs seeking the amount of \$23,605.00 was supported by a billing summary detailing the professionals who worked on the matter, the date the professional worked on the matter, the tasks performed, the amount of time billed for the activity and the hourly rate of the professional who performed the work. The Certification of Prosecution Costs also sought \$1,020.00 which was an estimate of costs that "were or will be . . . incurred" for six additional hours of preparation. It cannot be determined whether the estimated costs are reasonable.

With respect to the expert consultant costs, Ms. Criswell signed a certification attesting to the fact that the board incurred \$4,500.00 in expert consultant fees. She attached four forms on board letterhead entitled "Technical Expert Statement of Services" that were signed by Patrick Savage. Mr. Savage signed one form for each of the four land surveying projects on which he offered his expert opinion. He claimed 15 hours of work and "other expenses" of \$414.31 for each project, for a total request of \$1125 per reviewed project. The form did not include a breakdown of activities by categories; the time attributed to each task, or the hourly rate of compensation. The forms did not detail the date the activities were performed or the time spent performing those activities on each date. Due to the lack of specificity, it cannot be determined whether the costs claimed for expert fees are reasonable.

LEGAL CONCLUSIONS

Purpose of License Discipline

1. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee but rather to protect the public. (*Griffiths v. Superior Court* (2001) 96 Cal.App.4th 757, 768.) The main purpose of license discipline is protection of the public through the prevention of future harm and the rehabilitation of the licensee. (*Ibid*, at p. 772.)

Business and Professions Code section 6710.1 confirms that the "[p]rotection of the public [is] the highest priority for the Board for Professional Engineers, Land Surveyors, and Geologists in exercising its licensing, regulatory, and disciplinary functions."

Burden and Standard of Proof

2. Complainant bears the burden of proof of establishing that the charges in the accusation are true. The standard of proof in an administrative action seeking to suspend or revoke a professional license is “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it requires evidence so clear as to leave no substantial doubt, or sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Negligence and the Standard of Care

3. Professional Land Surveyors must exercise that degree of skill, knowledge, and care ordinarily possessed and exercised by members of their profession under similar circumstances. (*Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 122.) Because the standard of care of a licensed land surveyor is a matter peculiarly within the knowledge of experts, expert testimony is required to prove or disprove that a land surveyor performed in accordance with the standard of care unless the negligence is obvious to a layperson. (*Elcome v. Chin* (2003) 110 Cal.App.4th 310, 317.) The standard of care is often a function of custom and practice. (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 280.) The process of deriving a standard of care requires some evidence of an ascertainable practice. (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.) The expert testimony must be based on such matters as may be reasonably relied on by an expert in forming an opinion on the subject.

Ordinary or simple negligence – an unintentional tort – consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm. “Gross negligence” has long been defined in California and other jurisdictions as either a “want of even scant care” or “an extreme departure from the ordinary standard of conduct.” (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753-754.)

Statutory and Regulatory Authorities

4. Business and Professions Code section 8729, subdivision (a), provides that a licensed land surveyor may practice or offer to practice land surveying as a “sole proprietorship, partnership, limited liability partnership, firm, or corporation (hereinafter called business), if the following conditions are satisfied:

- (1) A land surveyor . . . currently licensed in the state is an owner, partner, or officer in charge of the land surveying practice of the business.

(2) All land surveying services are performed by or under the responsible charge of a land surveyor or civil engineer.

(3) If the business name of a California land surveying business contains the name of a person, then that person shall be licensed by the board as a land surveyor or licensed by the board . . . as a civil engineer. . . .

5. Business and Professions Code section 8729, subdivision (c), provides that a California land surveying business may have a fictitious name; however, if the fictitious name includes the name of any person, the business must comply with Section 8729, subdivision (a) (3). Subdivision (d) prohibits a non-licensed person from being the sole proprietor of a land surveying company. Subdivision (e) clarifies that an individual or business that does not provide land surveying services may contract with a licensed land surveyor to perform land surveying services “incidental to the conduct of business.”

6. Business and Professions Code section 8729, subdivision (i), provides that, “A current organization record form shall be filed with the board for all businesses engaged in rendering professional land surveying services.”

7. Business and Professions Code section 8759, subdivision (a), mandates that a land surveyor execute a written contract when providing professional services to a client. The subdivision sets forth the manner of execution and required terms of the contract as follows:

(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. The written contract shall include, but not be limited to, all of the following:

(1) A description of the services to be provided to the client by the licensed land surveyor or registered civil engineer.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the licensed land surveyor or registered civil engineer, and the name and address of the client.

(4) A description of the procedure that the licensed land surveyor or registered civil engineer and the client will use to accommodate additional services.

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

8. Business and Professions Code section 8761, subdivisions (a) through (e), regulate the preparation of documents generated in providing land surveying services:

(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. . . .

9. Business and Professions Code section 8762 governs the filing of a Record of Survey and states:

(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.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a “material discrepancy” is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The location, relocation, establishment, reestablishment, or retracement of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an

inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of 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.

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(2) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(e) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final

filing. For the purposes of this subdivision, “filing data” includes the date, the book or volume, and the page at which the record of survey is filed with the county recorder.

10. Business and Professions Code section 8765, subdivision (d), provides that a record of survey is not required:

When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a Corner Record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a “material discrepancy” is limited to a material discrepancy in the position of points or lines, or in dimensions.

11. Business and Professions Code section 8766 provides:

(a) Within 20 working days after receiving the record of survey, or within the additional time as may be mutually agreed upon by the land surveyor or civil engineer and the county surveyor, the county surveyor shall examine it with respect to all of the following:

(1) Its accuracy of mathematical data and substantial compliance with the information required by Section 8764.

(2) Its compliance with Sections 8762.5, 8763, 8764.5, 8771.5, and 8772.

(b) The examination pursuant to this section shall not require the licensed land surveyor or registered civil engineer submitting the record of survey to change the methods or procedures utilized or employed in the performance of the survey, nor shall the examination require a field survey to verify the data shown on the record of survey.

(c) Nothing in this section shall limit the county surveyor from including notes expressing opinions regarding the record of survey, or the methods or procedures utilized or employed in the performance of the survey.

(d) The examination pursuant to this section shall be performed by, or under the direct supervision of, a licensed land surveyor or registered civil engineer.

12. Business and Professions Code section 8767 provides:

If the county surveyor finds that the record of survey complies with the examination in Section 8766, the county surveyor shall endorse a statement on it of his or her examination, and shall present it to the county recorder for filing. Otherwise the county surveyor shall return it to the person who presented it, together with a written statement of the changes necessary to make it conform to the requirements of Section 8766. The licensed land surveyor or registered civil engineer submitting the record of survey may then make the agreed changes and note those matters which cannot be agreed upon in accordance with the provisions of Section 8768 and shall resubmit the record of survey within 60 days, or within the time as may be mutually agreed upon by the licensed surveyor or registered engineer and the county surveyor, to the county surveyor for filing pursuant to Section 8768.

13. Business and Professions Code section 8768 provides:

If the matters appearing on the record of survey cannot be agreed upon by the licensed land surveyor or the registered civil engineer and the county surveyor within 10 working days after the licensed land surveyor or registered civil engineer resubmits and requests the record of survey be filed without further change, an explanation of the differences shall be noted on the map and it shall be presented by the county surveyor to the county recorder for filing, and the county recorder shall file the record of survey. The licensed land surveyor or registered civil engineer filing the record of survey shall attempt to reach agreement with the county surveyor regarding the language for the explanation of the differences. If they cannot agree on the language explaining the differences, then both shall add a notation on the record of survey explaining the differences. The explanation of the differences shall be sufficiently specific to identify the factual basis for the difference.

14. Business and Professions Code section 8771, subdivisions (a) provides:

(a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure,

together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey.

15. Business and Professions Code section 8772 provides:

Any monument set by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line shall be permanently and visibly marked or tagged with the certificate number of the surveyor or civil engineer setting it, each number to be preceded by the letters "L.S." or "R.C.E.," respectively, as the case may be or, if the monument is set by a public agency, it shall be marked with the name of the agency and the political subdivision it serves.

Nothing in this section shall prevent the inclusion of other information on the tag which will assist in the tracing or location of the survey records which relate to the tagged monument.

16. Business and Professions Code section 8780 authorizes the board to investigate the actions of any licensed land surveyor. Section 8780 further provides that the board may, by a majority vote, "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 . . . who is legally authorized to practice land surveying on any of the following grounds:

(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

(b) Any negligence or incompetence in his or her practice of land surveying.

[¶] . . . [¶]

(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.

(g) A breach or violation of a contract to provide land surveying services.

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

17. California Code of Regulations, title 16, section 404, provides in part:

(u) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

[¶]. . . [¶]

(dd) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, "negligence" as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.

18. California Code of Regulation, title 16, section 404.2, states in pertinent part:

(a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor . . . 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

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

(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 . . . 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 . . . 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 . . . 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 . . . 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 . . . 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 . . . is answerable within said extent of control.

19. California Code of Regulation, title 16, section 463, subdivision (b), states:

A licensed land surveyor and/or civil engineer who practices or offers to practice land surveying, according to the provisions of Section 8729 of the Code, as a partner, member, or officer of a partnership, firm, or corporation shall advise the Board within thirty (30) days of such association or termination of association on a form approved by the Board

20. California Code of Regulation, title 16, section 464, subdivisions (b) and (c), state:

(b) A Corner Record shall be filed for each public land survey corner which is found, reset, or used as control in any survey by a land surveyor or a civil engineer. Exceptions to this rule are identified in Section 8773.4 of the Code.

[¶] . . . [¶]

(c) The Corner Record shall be filed within 90 days from the date a corner was found, set, reset, or used as control in any survey. The provisions for extending the time limit shall be the same as provided for a record of survey in Section 8762 of the Code.

Level of Discipline

21. In California Code of Regulations, title 16, section 419, the Board's Disciplinary Orders set forth maximum and minimum penalties for violations of Business and Professions Code section 8780. The minimum penalty is a reproof; the maximum penalty is revocation.

22. While respondent presented at the hearing as a thoughtful, caring individual who has a high regard for professionalism, who was proud of the work he accomplished and contrite about his errors, his presentation at the hearing stands in stark contrast to the evasive and combative attitude he displayed in his communications with others away from the courtroom. Respondent was often rambling, aggressive, unreasonable and confrontational in letters and e-mails. He rarely exhibited the professionalism he espoused at the hearing. This contrast causes one to question respondent's sincerity at the hearing. Respondent also was often non-responsive and non-cooperative with the board when it requested information from him.

On the other hand, respondent has been a licensed land surveyor for 31 years. This is the first disciplinary action brought against his license. By his own unchallenged count, respondent has performed well over 2000 surveys with no repercussions. According to Mr. Betz, respondent had competently provided land surveying services for some of the largest surveying projects in Southern California.

The Accusation was filed against respondent in 2012. Most of the land surveys in which respondent is alleged to have violated the Professional Land Surveyors Act were performed between 2009 and 2011, when respondent was simultaneously experiencing significant emotional and financial turmoil.

Additionally, with regard to the Polson Circle and Scott Street properties, respondent's license is subject to discipline partly because he was held responsible for the conduct of an individual who appears to have improperly obtained a land surveyor's stamp; performed incompetent surveys; forged respondent's signature; used the false stamp to validate survey maps without respondent's knowledge; and misrepresented the circumstances of a survey to respondent. However, the fact that respondent believed that an unlicensed individual could perform construction staking without supervision provided the opportunity for this individual to act even further outside of the authority granted to him by respondent. The Accusation contained 34 causes for discipline. For the reasons discussed in detail above, cause to discipline respondent's license existed in 21 of the causes for discipline; in 13 the facts did not support discipline. Of the 21 sustained causes for discipline, at least nine related, wholly or partially, to Mr. Licea's improper conduct.

23. The Deputy Attorney General conceded that, taken individually, respondent's violations did not justify revocation of his license but contended that the accumulation of violations warranted revocation.

24. Based upon a consideration of all of the facts and circumstances discussed in detail above, revocation is not warranted in this matter. However, in order to protect the public, to help respondent better understand the significance of his errors and failure to keep current with the practice of land surveying, it is concluded that the most appropriate disciplinary order is a revocation, stayed, and the placing of respondent's license on probation for three years, along with certain terms and conditions of probation. The terms and conditions of probation, including requirements that respondent complete educational and ethics courses and that he practice professional land surveying only under the review of a professional land surveyor, are specifically tailored to protecting the public.

The Reasonable Costs of Investigation and Enforcement

25. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "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."

26. The Office of Administrative Hearings has enacted regulations for use when evaluating an agency's request for costs under Business and Professions Code section 125.3. (Cal. Code Regs., tit. 1, § 1042.) Under the regulations, a cost request must be accompanied by a declaration or certification of costs. The declaration "may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost." Alternatively, the agency may provide a bill or invoice. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1).) For services provided by persons who are not agency employees, the declaration must be executed by the person providing the service and must describe the general tasks performed, the time spent on each task and the hourly rate. In lieu of the declaration, the agency may attach copies of the time and billing records submitted by the service provider. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).)

The Certification of Prosecution Costs prepared by Deputy Attorney General David E. Hausfeld requested costs of enforcement in the amount of \$24, 625.00, including \$1,020.00 in estimated costs. As to actual costs of \$23,605.00, the certification complied with the OAH regulation and included an attached breakdown of tasks by the professional who performed them, their general nature, the amount of time spent, and the amount charged. This case was a complex matter involving eight projects and thirty-four causes for discipline; the hearing took place over three days. The costs requested of \$23, 605.00 are reasonable and are allowed.

One cannot determine from the certification whether the \$1,020.00 is an estimate of costs that were incurred or an estimate of costs that are expected to be incurred. If the \$1,020.00 an estimate of costs that are expected to be incurred, the certification fails to satisfy the requirements of either Business and Professions Code section 125.3 or California Code of Regulations, title 1, section 1042. If the \$1,020.00 is an estimate of costs that were incurred, the certification is incomplete because it fails to "explain the unavailability of

actual cost information” as is required by California Code of Regulations, title 1, section 1042, subdivision (b)(5). The estimated costs are not allowed.

The Technical Expert Statement of Services and certification seeking recovery of \$4,500.00 in expert fees did not comply with the OAH regulation. It is impossible to determine from the documents if the costs claimed are permissible charges under Business and Professions Code section 125.3, or to determine the reasonableness of the costs being sought. Without the key billing information required, it is impossible to determine the reasonableness of the costs being sought. Absent that information, complainant’s request for expert fees must be denied.

27. Other factors that must be considered when determining costs are discussed in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and prosecution should be awarded or reduced, the Administrative Law Judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee’s subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

Respondent presented evidence of his subjective good faith belief in the merits of his position in some causes for discipline, and he successfully defended 13 of the 34 causes for discipline. Respondent raised a colorable challenge to the proposed discipline and successfully achieved a reduction in the severity of the discipline sought to be imposed.

Respondent testified about many financial challenges he and he family have faced since 2009. Respondent is currently receiving unemployment insurance compensation. Respondent also submitted financial documents confirming his inability to pay the cost recovery requested. After consideration of all of the relevant factors, it is determined that it is reasonable to require respondent to pay \$10,000.00 in costs.

ORDER

Land Surveyor License number L 5508 issued to respondent Michael Alan Sanchez is revoked. However, the revocation is stayed and respondent is placed on probation for three years on the following terms and conditions:

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

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

(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) During the period of probation, the respondent may practice professional land surveying only under the review of a professional land surveyor licensed in the same branch as the respondent. This person or persons shall be approved in advance by the Board or its designee. Such reviewing land surveyor shall initial every stamped or sealed document in close proximity to the respondent's stamp or seal.

(6) Within 60 days of the effective date of the decision, the respondent shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

(7) The respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. The probationary condition shall include a time period in which this course shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(8) 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. The number of courses required is within the discretion of the board. 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. The course or courses must be successfully completed no later than 60 days before the end of the probationary period.

(9) For any records of survey and/or corner records found not to have been filed and recorded, respondent shall file or record, as appropriate, the required record(s) with the appropriate governmental agency within 90 days of the effective date of the decision. The respondent shall provide the Board with verifiable proof that the required record(s) have been filed or recorded, as appropriate, within 30 days of such filing or recordation.

(10) Respondent shall pay to the Board the amount of \$10,000.00 for its costs of investigation and enforcement. Respondent may apply to the board for a plan to make monthly payments.

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

DATED: July 29, 2015

Original Signed

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 1016-A

13 **MICHAEL ALAN SANCHEZ**
14 **1522 Sweet Basil Circle**
Hemet, CA 92545

SECOND AMENDED ACCUSATION

15 **Land Surveyor License No. L 5508**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 16, 1984, the Board for Professional Engineers, Land Surveyors,
24 and Geologists issued Land Surveyor License Number L 5508 to Michael Alan Sanchez
25 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on September 30, 2016, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board for Professional Engineers, Land
3 Surveyors, and Geologists (Board), Department of Consumer Affairs, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

6 4. Section 8780 of the Code states:

7 [T]he board may revoke, suspend for a period not to exceed two years, or
8 revoke the license or certificate of any licensed land surveyor or registered civil
9 engineer, respectively, licensed under this chapter or registered under the provisions
of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

10 (a) Any fraud, deceit, or misrepresentation in his or her practice of land
surveying.

11 (b) Any negligence or incompetence in his or her practice of land surveying.

12

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

15

16 (f) Aiding or abetting any person in the violation of any provision of this
chapter.

17 (g) A breach or violation of a contract to provide land surveying services.

18 (h) A violation in the course of the practice of land surveying of a rule or
19 regulation of unprofessional conduct adopted by the board.

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

24 **STATUTORY PROVISIONS**

25 6. Section 8729 of the Code states, in pertinent part:

26 (a) This chapter does not prohibit one or more licensed land surveyors or
27 civil engineers licensed in this state prior to 1982 (hereinafter called civil
28 engineers) from practicing or offering to practice, within the scope of their
licensure, land surveying as a sole proprietorship, partnership, limited liability

1 partnership, firm, or corporation (hereinafter called business), if the following
2 conditions are satisfied:

3 (1) A land surveyor or civil engineer currently licensed in the state is an
4 owner, partner, or officer in charge of the land surveying practice of the business.

5 (2) All land surveying services are performed by or under the responsible
6 charge of a land surveyor or civil engineer.

7 (3) If the business name of a California land surveying business contains the
8 name of a person, then that person shall be licensed by the board as a land
9 surveyor or licensed by the board in any year as a civil engineer. Any offer,
10 promotion, or advertisement by the business that contains the name of any
11 individual in the business, other than by use of the name of the individual in the
12 business name, shall clearly and specifically designate the license discipline of
13 each individual named.

14

15 (c) The business name of a California land surveying business may be a
16 fictitious name. However, if the fictitious name includes the names of any person,
17 the requirements of paragraph (3) of subdivision (a) shall be met.

18

19 (i) A current organization record form shall be filed with the board for all
20 businesses engaged in rendering professional land surveying services.

21

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

23 (a) A licensed land surveyor or registered civil engineer authorized to practice
24 land surveying shall use a written contract when contracting to provide professional
25 services to a client pursuant to this chapter. The written contract shall be executed
26 by the licensed land surveyor or registered civil engineer and the client, or his or her
27 representative, prior to the licensed land surveyor or registered civil engineer
28 commencing work, unless the client knowingly states in writing that work may be
commenced before the contract is executed. The written contract shall include, but
not be limited to, all of the following:

(1) A description of the services to be provided to the client by the licensed
land surveyor or registered civil engineer.

(2) A description of any basis of compensation applicable to the contract,
and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the licensed land
surveyor or registered civil engineer, and the name and address of the client.

(4) A description of the procedure that the licensed land surveyor or
registered civil engineer and the client will use to accommodate additional
services.

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

2

3 8. Section 8761 of the Code states:

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

6 (b) All maps, plats, reports, descriptions, or other land surveying documents
7 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
8 name and license number.

9 (c) Interim maps, plats, reports, descriptions, or other land surveying
10 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."

11 (d) All final maps, plats, reports, descriptions, or other land surveying
12 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
13 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
14 sealing or stamping shall appear, at a minimum, on the title sheet, cover sheet or
page, or signature sheet, unless otherwise required by law.

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

17 (f) It is unlawful for any person to stamp or seal any map, plat, report,
18 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
19 been suspended or revoked, unless the certificate has been renewed or reissued.

20 9. Section 8765 of the Code states, in pertinent part:

21 "A record of survey is not required of any survey:

22 ". . . .

23 "(d) When the survey is a retracement of lines shown on a subdivision map, official map, or
24 a record of survey, where no material discrepancies with those records are found and sufficient
25 monumentation is found to establish the precise location of property corners thereon, provided
26 that a corner record is filed for any property corners which are set or reset or found to be of a
27 different character than indicated by prior records. For purposes of this subdivision, a "material
28

1 discrepancy” is limited to a material discrepancy in the position of points or lines, or in
2 dimensions.

3 “....”

4 10. Section 8767 of the Code states:

5 If the county surveyor finds that the record of survey complies with the
6 examination in Section 8766, the county surveyor shall endorse a statement on it
7 of his or her examination, and shall present it to the county recorder for filing.
8 Otherwise the county surveyor shall return it to the person who presented it,
9 together with a written statement of the changes necessary to make it conform to
10 the requirements of Section 8766. The licensed land surveyor or registered civil
11 engineer submitting the record of survey may then make the agreed changes and
12 note those matters which cannot be agreed upon in accordance with the provisions
13 of Section 8768 and shall resubmit the record of survey within 60 days, or within
14 the time as may be mutually agreed upon by the licensed surveyor or registered
15 engineer and the county surveyor, to the county surveyor for filing pursuant to
16 Section 8768.

12 11. Section 8771 of the Code states:

13 (a) Monuments set shall be sufficient in number and durability and efficiently
14 placed so as not to be readily disturbed, to assure, together with monuments
15 already existing, the perpetuation or facile reestablishment of any point or line of
16 the survey.

16 (b) When monuments exist that control the location of subdivisions, tracts,
17 boundaries, roads, streets, or highways, or provide horizontal or vertical survey
18 control, the monuments shall be located and referenced by or under the direction
19 of a licensed land surveyor or registered civil engineer prior to the time when any
20 streets, highways, other rights-of-way, or easements are improved, constructed,
21 reconstructed, maintained, resurfaced, or relocated, and a corner record or record
22 of survey of the references shall be filed with the county surveyor. They shall be
23 reset in the surface of the new construction, a suitable monument box placed
24 thereon, or permanent witness monuments set to perpetuate their location if any
25 monument could be destroyed, damaged, covered, or otherwise obliterated, and a
26 corner record or record of survey filed with the county surveyor prior to the
27 recording of a certificate of completion for the project. Sufficient controlling
28 monuments shall be retained or replaced in their original positions to enable
property, right-of-way and easement lines, property corners, and subdivision and
tract boundaries to be reestablished without devious surveys necessarily
originating on monuments differing from those that currently control the area. It
shall be the responsibility of the governmental agency or others performing
construction work to provide for the monumentation required by this section. It
shall be the duty of every land surveyor or civil engineer to cooperate with the
governmental agency in matters of maps, field notes, and other pertinent records.
Monuments set to mark the limiting lines of highways, roads, streets or right-of-
way or easement lines shall not be deemed adequate for this purpose unless
specifically noted on the corner record or record of survey of the improvement
works with direct ties in bearing or azimuth and distance between these and other
monuments of record.

1 (c) The decision to file either the required corner record or a record of survey
2 pursuant to subdivision (b) shall be at the election of the licensed land surveyor or
3 registered civil engineer submitting the document.

4 12. Section 8772 of the Code states:

5 Any monument set by a licensed land surveyor or registered civil engineer to
6 mark or reference a point on a property or land line shall be permanently and visibly
7 marked or tagged with the certificate number of the surveyor or civil engineer
8 setting it, each number to be preceded by the letters "L.S." or "R.C.E.,"
9 respectively, as the case may be or, if the monument is set by a public agency, it
10 shall be marked with the name of the agency and the political subdivision it serves.

11 Nothing in this section shall prevent the inclusion of other information on
12 the tag which will assist in the tracing or location of the survey records which
13 relate to the tagged monument.

14 **REGULATORY PROVISIONS**

15 13. California Code of Regulations, title 16, (CCR) section 404.2 states, in pertinent part:

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

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

24 (A) Makes or review and approves the land surveying decisions defined and
25 described in subdivision (a)(2) below.

26 (B) In making or reviewing and approving the land surveying decisions,
27 determines the applicability of survey criteria and technical recommendations
28 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.

....

14. CCR section 463 sub-division (b) states, in pertinent part:

“(b) A licensed land surveyor and/or civil engineer who practices or offers to practice land surveying, according to the provisions of Section 8729 of the Code, as a partner, member, or officer of a partnership, firm, or corporation shall advise the Board within thirty (30) days of such association or termination of association on a form approved by the Board.”

///

///

1 15. CCR section 464 states, in pertinent part:

2 “

3 “(b) A corner record shall be filed for each public land survey corner which is found, reset,
4 or used as control in any survey by a land surveyor or a civil engineer. Exceptions to this rule are
5 identified in Section 8773.4 of the Code.

6 “(c) The corner record shall be filed within 90 days from the date a corner was found, set,
7 reset, or used as control in any survey. The provisions for extending the time limit shall be the
8 same as provided for a record of survey in Section 8762 of the Code.

9 “”

10 **COST RECOVERY**

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

15 **OAKWOOD STREET, CITY OF PASADENA**

16 17. Respondent, a licensed land surveyor, acting in responsible charge for Nationwide
17 Surveying, Inc., was retained to survey and set property corners for the owner of a residential lot
18 located at 2219 Oakwood Street in Pasadena, California, so that the owner could construct a
19 fence. Respondent failed to perform the work as agreed and failed to maintain responsible charge
20 of the work.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Misrepresentation in the Practice of Land Surveying)**

23 18. Respondent is subject to disciplinary action under Code section 8780 (a) in that
24 Respondent misrepresented the facts in his practice of land surveying regarding the Oakwood
25 Street project in Pasadena, as set forth in paragraph 15 above, which is incorporated by reference
26 herein.

27 19. In particular, Respondent misrepresented his role as the responsible party for his
28 survey.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Negligence in the Practice of Land Surveying)**

3 20. Respondent is subject to disciplinary action under Code section 8780 (b) in that he
4 was negligent and incompetent in his practice of land surveying regarding the Oakwood Street
5 property, City of Pasadena, as set forth in paragraph 15, which is incorporated by reference
6 herein.

7 21. In particular, Respondent did not meet the standard of care for a licensed land
8 surveyor in his practice of land surveying in that he provided sub-standard work in his practice
9 and he failed to disclose to his client that a more complete boundary survey would be needed.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Aiding and Abetting an Unlicensed Person)**

12 22. Respondent is subject to disciplinary action under Code section 8780 (f) in that he
13 aided and abetted another, Nationwide Surveying, Inc., in the unlicensed practice of land
14 surveying regarding the Oakwood Street property, City of Pasadena, as set forth in paragraph 15,
15 which is incorporated by reference herein.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Breach of Contract)**

18 23. Respondent is subject to disciplinary action under Code section 8780 (g) in that he
19 was in breach of his contract with his client in that he provided an incomplete survey of the
20 Oakwood Street property, City of Pasadena, as set forth in paragraph 15, which is incorporated by
21 reference herein.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Violation of Required Terms of a Contract)**

24 24. Respondent is subject to disciplinary action under Code sections 8780 (d) for
25 violation of Code sections 8759 (a) (3), (4) and (5), in that Respondent did not provide a written
26 contract to his client. The invoice that was given to the client was insufficient as a contract in that
27 it was not signed by the client and did not provide the following required items:

- 28 (a) Respondent's name and land surveyor license number was not provided;

1 (b) No procedure was identified to accommodate additional services;

2 (c) No procedure was identified to terminate the contract.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Responsible Charge)**

5 25. Respondent is subject to disciplinary action under Code section 8780 (h) for violation
6 of CCR, section 404.2 in that he failed to demonstrate responsible charge in his practice of land
7 surveying regarding the Oakwood Street property, City of Pasadena, as set forth in paragraph 15,
8 which is incorporated by reference herein.

9 **POLSON CIRCLE, CITY OF MARTINEZ**

10 26. Respondent, acting in responsible charge for DM Consultants, was retained to survey
11 and set corners for the owner of a residential lot located at 1106 Polson Circle in Martinez,
12 California. Respondent failed to perform the work as agreed and failed to maintain responsible
13 charge of the work. The survey was conducted by Respondent's subordinate, Roger Licea, an
14 unlicensed surveyor performing under the responsible charge of Respondent.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Misrepresentation in the Practice of Land Surveying)**

17 27. Respondent is subject to disciplinary action under Code section 8780 (a) in that
18 Respondent misrepresented the facts in his practice of land surveying regarding the Polson Circle
19 property in Martinez, as set forth in paragraph 24 above, which is incorporated by reference
20 herein.

21 28. In particular, Respondent misrepresented his role as the responsible party for his
22 survey.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(Negligence in the Practice of Land Surveying)**

25 29. Respondent is subject to disciplinary action under Code section 8780 (b) in that he
26 was negligent and incompetent in his practice of land surveying regarding the Polson Circle
27 property in Martinez, as set forth in paragraph 24 above, which is incorporated by reference
28 herein.

1 30. In particular, Respondent did not meet the standard of care for a licensed land
2 surveyor in his practice of land surveying in that the survey contained a number of errors and
3 deficiencies. These errors and deficiencies include but are not limited to the following:

- 4 a. Failed to include necessary measurements.
- 5 b. Failed to accurately locate the rear property line.
- 6 c. Set sub-standard monuments.
- 7 d. Failed to adequately supervise his subordinate.

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Aiding and Abetting an Unlicensed Person)**

10 31. Respondent is subject to disciplinary action under Code section 8780 (f) in that he
11 aided and abetted another, DM Consultants and Roger Licea, in the unlicensed practice of land
12 surveying regarding the Polson Circle property in Martinez, as set forth in paragraph 24, which is
13 incorporated by reference herein.

14 **TENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Execute a Written Contract)**

16 32. Respondent is subject to disciplinary action under Code sections 8780 (d) for
17 violation of Code section 8759 in that Respondent did not provide a written contract to his client
18 regarding the Polson Circle property in Martinez.

19 **ELEVENTH CAUSE FOR DISCIPLINE**

20 **(Failure to Prepare a Survey Map)**

21 33. Respondent is subject to disciplinary action under Code sections 8780 (d) for
22 violation of Code section 8761 in that Respondent did not prepare a survey map, regarding the
23 Polson Circle property in Martinez, based upon a survey performed while he maintained
24 appropriate responsible charge.

25 **TWELFTH CAUSE FOR DISCIPLINE**

26 **(Failure to File a Timely Corner Record)**

27 34. Respondent is subject to disciplinary action under Code section 8780 (d) for violation
28 of Code section 8765 (d) and under Code section 8780 (h) for violation of CCR section 464 (c) in

1 that he failed to file the corner record within 90 days of his survey of the Polson Circle property
2 in Martinez, as set forth in paragraph 24 above, which is incorporated by reference herein.

3 **THIRTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Set Sufficient Durable Monuments)**

5 35. Respondent is subject to disciplinary action under Code sections 8780 (d) for
6 violation of Code section 8771 in that Respondent failed to set sufficient durable monuments on
7 the Polson Circle property in Martinez, as set forth in paragraph 24 above, which is incorporated
8 by reference herein.

9 **FOURTEENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Tag Monuments)**

11 36. Respondent is subject to disciplinary action under Code sections 8780 (d) for
12 violation of Code section 8772 in that Respondent failed to properly tag monuments on the
13 Polson Circle property in Martinez, as set forth in paragraph 24 above, which is incorporated by
14 reference herein.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Responsible Charge)**

17 37. Respondent is subject to disciplinary action under Code section 8780 (h) for violation
18 of CCR, section 404.2 in that he failed to demonstrate responsible charge in his practice of land
19 surveying regarding the Polson Circle property in Martinez, as set forth in paragraph 24 above,
20 which is incorporated by reference herein.

21 **SANTA CLARA AVENUE, CITY OF SANTA ANA**

22 38. Respondent was retained to perform surveying services for the owner of a residential
23 lot located at 413 Santa Clara Avenue in Santa Ana, California. Respondent failed to perform the
24 work as agreed and performed in an unprofessional manner.

25 **SIXTEENTH CAUSE FOR DISCIPLINE**

26 **(Negligence in the Practice of Land Surveying)**

27 39. Respondent is subject to disciplinary action under Code section 8780 (b) in that he
28 was negligent and incompetent in his practice of land surveying regarding the Santa Clara

1 Avenue property in Santa Ana, as set forth in paragraph 36 above, which is incorporated by
2 reference herein.

3 40. In particular, Respondent did not meet the standard of care for a licensed land
4 surveyor in his practice of land surveying in that he provided services in a manner that did not
5 comply with the provisions of the Professional Land Surveyors Act.

6 **SEVENTEENTH CAUSE FOR DISCIPLINE**

7 **(Violation of Required Terms of a Contract)**

8 41. Respondent is subject to disciplinary action under Code sections 8780 (d) for
9 violation of Code sections 8759 (a) (3), (4) and (5), in that Respondent did not provide a written
10 contract to his client. The “electronic contract” provided by Respondent was insufficient as a
11 contract in that it was not signed by the client and did not provide the following required items:

- 12 (a) Respondent’s name and land surveyor license number was not provided;
- 13 (b) No procedure was identified to accommodate additional services;
- 14 (c) No procedure was identified to terminate the contract.

15 **EIGHTEENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Include Name, License Number, Seal and Stamp on a Survey Document)**

17 42. Respondent is subject to disciplinary action under Code section 8780 (d) for violation
18 of Code section 8761 (d) in that in that Respondent prepared a plat map, regarding the Santa
19 Clara Avenue property in Santa Ana, as set forth in paragraph 36 above, which is incorporated by
20 reference herein.

21 43. In particular, the missing items included Respondent’s name, license number, stamp
22 and seal.

23 **NINETEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to File a Timely Corner Record)**

25 44. Respondent is subject to disciplinary action under Code section 8780 (d) for violation
26 of Code section 8765 (d) and under Code section 8780 (h) for violation of CCR section 464 (c) in
27 that he failed to file the corner record within 90 days of his survey of the Santa Clara Avenue
28

1 property in Santa Ana, as set forth in paragraph 36 above, which is incorporated by reference
2 herein.

3 **SCOTT STREET, CITY OF MORRO BAY**

4 45. Respondent, acting in responsible charge for DM Consultants, was retained to survey
5 the property and to locate the boundaries for the owner of a residential lot located at 1250 Scott
6 Street in Morro Bay, California. Respondent failed to perform the work as agreed and failed to
7 maintain responsible charge of the work. The survey was conducted by Respondent's
8 subordinate, Roger Licea, an unlicensed surveyor performing under the responsible charge of
9 Respondent.

10 **TWENTIETH CAUSE FOR DISCIPLINE**

11 **(Misrepresentation in the Practice of Land Surveying)**

12 46. Respondent is subject to disciplinary action under Code section 8780 (a) in that
13 Respondent misrepresented the facts in his practice of land surveying regarding the Scott Street
14 property in Morro Bay, as set forth in paragraph 43 above, which is incorporated by reference
15 herein.

16 47. In particular, Respondent misrepresented his role as the responsible party for his
17 survey.

18 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

19 **(Negligence in the Practice of Land Surveying)**

20 48. Respondent is subject to disciplinary action under Code section 8780 (b) in that he
21 was negligent and incompetent in his practice of land surveying regarding the Scott Street
22 property in Morro Bay, as set forth in paragraph 43 above, which is incorporated by reference
23 herein.

24 49. In particular, Respondent did not meet the standard of care for a licensed land
25 surveyor in his practice of land surveying in that the survey contained a number of errors and
26 deficiencies. These errors and deficiencies include but are not limited to the following:

- 27 a. Failed to include necessary measurements.
28 b. Failed to accurately locate the property line.

- c. Set sub-standard monuments.
- d. Failed to adequately supervise his subordinate.
- e. Failed to keep adequate notes and records of his survey.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Aiding and Abetting an Unlicensed Person)

50. Respondent is subject to disciplinary action under Code section 8780 (f) in that he aided and abetted another, DM Consultants and Roger Licea, in the unlicensed practice of land surveying regarding the Scott Street property in Morro Bay, as set forth in paragraph 43 above, which is incorporated by reference herein.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Violation of Required Terms of a Contract)

51. Respondent is subject to disciplinary action under Code sections 8780 (d) for violation of Code sections 8759 (a) (4) and (5), in that Respondent did not provide a written contract to his client. The invoice that was given to the client was insufficient as a contract in that it was not signed by the client and did not provide the following required items:

- (a) No procedure was identified to accommodate additional services;
- (b) No procedure was identified to terminate the contract.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Failure to Prepare a Survey Map)

52. Respondent is subject to disciplinary action under Code sections 8780 (d) for violation of Code section 8761 in that Respondent did not prepare a survey map, regarding the Scott Street property in Morro Bay, based upon a survey performed while he maintained appropriate responsible charge.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Failure to File a Timely Corner Record)

53. Respondent is subject to disciplinary action under Code section 8780 (d) for violation of Code section 8765 (d) and under Code section 8780 (h) for violation of CCR section 464 (c) in

1 that he failed to file the corner record within 90 days of his survey of the Scott Street property in
2 Morro Bay, as set forth in paragraph 43 above, which is incorporated by reference herein.

3 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

4 **(Failure to Tag Monuments)**

5 54. Respondent is subject to disciplinary action under Code sections 8780 (d) for
6 violation of Code section 8772 in that Respondent failed to properly tag monuments on the Scott
7 Street property in Morro Bay, as set forth in paragraph 43 above, which is incorporated by
8 reference herein.

9 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Responsible Charge)**

11 55. Respondent is subject to disciplinary action under Code section 8780 (h) for violation
12 of CCR, section 404.2 in that he failed to demonstrate responsible charge in his practice of land
13 surveying regarding the Scott Street property in Morro Bay, as set forth in paragraph 43 above,
14 which is incorporated by reference herein.

15 **RECORD OF SURVEY 06-235**

16 56. On or about June 28, 2006, Respondent submitted Record of Survey 06-235 to the
17 San Bernardino County Surveyor's office. This Record of Survey was for the survey work
18 identified as a portion of the northeast 1/4 of Section 28, T9N, R2W, SBM in the Barstow area of
19 San Bernardino County, California. The County determined that the Record of Survey was
20 incomplete and needed corrections. On October 18, 2006, the County returned the Record of
21 Survey to Respondent and requested Respondent make corrections and re-submit the Record of
22 Survey. On or about June 20, 2011 Record of Survey 06-235 was re-submitted to the San
23 Bernardino County Surveyor's office. The County determined that the re-submitted Record of
24 Survey was still incomplete and needed corrections. On June 22, 2011, the County returned the
25 re-submitted Record of Survey to Respondent and again requested Respondent make corrections
26 and re-submit the Record of Survey. The corrected Record of Survey has never been re-
27 submitted to the San Bernardino County Surveyor's office.

28 ///

1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Re-submit a Timely Record of Survey)**

3 57. Respondent is subject to disciplinary action under Code section 8780 (d) for violation
4 of Code section 8767 in that he failed to re-submit the Record of Survey within 60 days after the
5 San Bernardino County Surveyor's office returned them to him for corrections, as set forth in
6 paragraph 54, which is incorporated by reference herein.

7 **RECORD OF SURVEY 2009-1033**

8 58. On or about February 10, 2009, Respondent submitted Record of Survey 2009-1033
9 to the Orange County Surveyor's office. (First Submittal) This Record of Survey was for the
10 survey work identified as parcel 2 of PMB 42/26 in the unincorporated area of Orange County,
11 California. The County determined that the Record of Survey was incomplete and needed
12 corrections. On March 24, 2009, the County returned the Record of Survey to Respondent and
13 requested Respondent make corrections and re-submit the Record of Survey. On or about July 6,
14 2009 Record of Survey 2009-1033 was re-submitted to the Orange County Surveyor's office.
15 (Second Submittal) The County determined that the re-submitted Record of Survey was still
16 incomplete and needed corrections. On February 28, 2010, the County returned the re-submitted
17 Record of Survey to Respondent and again requested Respondent make corrections and re-submit
18 the Record of Survey. On or about November 20, 2012 Record of Survey 2009-1033 was re-
19 submitted to the Orange County Surveyor's office. (Third Submittal) The County determined
20 that the re-submitted Record of Survey was still incomplete and needed corrections. The County
21 returned the re-submitted Record of Survey to Respondent and again requested Respondent make
22 corrections and re-submit the Record of Survey. On or about July 31, 2013 Record of Survey
23 2009-1033 was re-submitted to the Orange County Surveyor's office. (Fourth Submittal) The
24 County determined that the re-submitted Record of Survey was still incomplete and needed
25 corrections. On September 20, 2013, the County returned the re-submitted Record of Survey to
26 Respondent and again requested Respondent make corrections and re-submit the Record of
27 Survey. The corrected Record of Survey has never been re-submitted to the Orange County
28 Surveyor's office.

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Re-submit a Timely Record of Survey)**

3 59. Respondent is subject to disciplinary action under Code section 8780 (d) for violation
4 of Code section 8767 in that he failed to re-submit the Record of Survey within 60 days after the
5 Orange County Surveyor's office returned it to him for corrections, as set forth in paragraph 58,
6 which is incorporated by reference herein.

7 **RECORD OF SURVEY 2011-1078**

8 60. On or about June 10, 2011, Respondent submitted Record of Survey 2011-1078 to the
9 Orange County Surveyor's office. This Record of Survey was for the survey work identified as a
10 portion of Lot 5, Tract 1005 in the City of Anaheim, California. The County determined that the
11 Record of Survey was incomplete and needed corrections. (First Submittal) On July 25, 2011, the
12 County returned the Record of Survey to Respondent and requested Respondent make corrections
13 and re-submit the Record of Survey. On or about June 28, 2012, Record of Survey 2011-1078
14 was re-submitted to the Orange County Surveyor's office. (Second Submittal) The County
15 determined that the re-submitted Record of Survey was still incomplete and needed corrections.
16 On August 14, 2012, the County returned the re-submitted Record of Survey to Respondent and
17 again requested Respondent make corrections and re-submit the Record of Survey. On or about
18 July 31, 2013, Record of Survey 2011-1078 was re-submitted to the Orange County Surveyor's
19 office. (Third Submittal) The County determined that the re-submitted Record of Survey was still
20 incomplete and needed corrections. On September 20, 2013, the County returned the re-
21 submitted Record of Survey to Respondent and again requested Respondent make corrections and
22 re-submit the Record of Survey. The corrected Record of Survey has never been re-submitted to
23 the Orange County Surveyor's office.

24 **THIRTIETH CAUSE FOR DISCIPLINE**

25 **(Failure to Re-submit a Timely Record of Survey)**

26 61. Respondent is subject to disciplinary action under Code section 8780 (d) for violation
27 of Code section 8767 in that he failed to re-submit the Record of Survey within 60 days after the
28

1 Orange County Surveyor's office returned them to him for corrections, as set forth in paragraph
2 60, which is incorporated by reference herein.

3 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Failure to Timely File an Organization Record Form)**

5 62. Respondent is subject to disciplinary action under Code section 8729 (i) for violation
6 of CCR, section 463 (b), in that he failed to file with the CSLB an Organization Record Form that
7 identified his business name as MLM Engineering in a timely manner.

8 **PREPARATION OF PARCEL MAP IN MURRIETA, CALIFORNIA**

9 63. Respondent, acting in responsible charge for AC Engineering Group, Inc., an
10 unlicensed entity, was retained to survey and prepare a parcel map for a property located in
11 Murrieta, California. Respondent was not an officer or an employee of AC Engineering and did
12 not have a contract with the property owner in Murrieta.

13 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

14 **(Aiding and Abetting an Unlicensed Person)**

15 64. Respondent is subject to disciplinary action under Code section 8780 (f) in that he
16 aided and abetted another, AC Engineering Group, Inc., in the unlicensed practice of land
17 surveying regarding the property in Murrieta, as set forth in paragraph 63 above, which is
18 incorporated by reference herein.

19 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

20 **(Violation of Required Terms of a Contract)**

21 65. Respondent is subject to disciplinary action under Code sections 8780 (d) for
22 violation of Code sections 8759, in that Respondent did not provide a written contract to his client
23 for the property in Murrieta, as set forth in paragraph 63 above, which is incorporated by
24 reference herein.

25 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

26 **(Failure to Maintain Responsible Charge)**

27 66. Respondent is subject to disciplinary action under Code section 8780 (h) for violation
28 of CCR, section 404.2 in that he failed to demonstrate responsible charge in his practice of land

1 surveying regarding the property in Murrieta, as set forth in paragraph 63 above, which is
2 incorporated by reference herein.

3 **PRAYER**

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

7 1. Revoking or suspending Land Surveyor License Number L 5508, issued to Michael
8 Alan Sanchez;

9 2. Ordering Michael Alan Sanchez to pay the Board for Professional Engineers, Land
10 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
11 pursuant to Business and Professions Code section 125.3;

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

13
14
15 DATED: 11/12/14

Original Signed

16 RICHARD B. MOORE, PLS
17 Executive Officer
18 Board for Professional Engineers, Land Surveyors, and
19 Geologists
20 Department of Consumer Affairs
21 State of California
22 *Complainant*

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