

**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:

Case No. 916-A

IVAN WAI-KUEN CHIU
2160 Parnell Way
Altadena, CA 91001
Land Surveyor License No. L 6762
Civil Engineer License No. C 44672

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 30, 2011.

It is so ORDERED November 18, 2011

Original Signed

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

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
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Attorneys for Complainant
7

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16 Respondent.

Case No. 916-A

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21
22 PARTIES

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

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1 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
2 the attendance of witnesses and the production of documents; the right to reconsideration and
3 court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

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

7 CULPABILITY

8 9. For the purpose of resolving the First Amended Accusation without the expense and
9 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
10 establish a factual basis for the charges in the First Amended Accusation, and that Respondent
11 hereby gives up his right to contest those charges.

12 10. Respondent agrees that his license is subject to discipline, and he agrees to be bound
13 by the Board's imposition of discipline as set forth in the Disciplinary Order below.

14 11. Respondent agrees that his Land Surveyor License is subject to discipline and he
15 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
16 below.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board. Respondent understands
19 and agrees that counsel for Complainant and the staff of the Board may communicate directly
20 with the Board regarding this stipulation and settlement, without notice to or participation by
21 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
22 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
23 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
24 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
25 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
26 be disqualified from further action by having considered this matter.

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1 submitted to the Office of the Attorney General for the filing of such, the Board shall have
2 continuing jurisdiction until all matters are final, and the period of probation shall be extended
3 until all matters are final.

4 **5. Completion of Probation.** Upon successful completion of all of the probationary
5 conditions and the expiration of the period of probation, the Respondent's Land Surveyor
6 License, No. L 6762, shall be unconditionally restored.

7 **6. Cost Recovery.** Respondent is hereby ordered to reimburse the Board the amount of
8 \$3,000 within one and one-half (1½) years of the effective date of the decision for its
9 investigative and prosecution costs. Said reimbursement may be paid in installments. Failure to
10 reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the
11 probation order.

12 **7. Examination.** Within 60 days of the effective date of the decision, Respondent shall
13 successfully complete and pass the California Laws and Board Rules examination, as
14 administered by the Board.

15 **8. Take And Pass Examinations.** Within one and one-half (1½) years of the effective
16 date of the decision, Respondent shall successfully complete and pass, with a grade of "C" or
17 better , one (1) college-level land surveying course related to the areas of violation alleged in the
18 Accusation. Said course shall be approved in advance by the Board or its designee. Respondent
19 shall provide the Board with official proof of completion of the requisite course. For purposes of
20 this condition, "college-level course" means a course offered by a community college or a four-
21 year university of three semester units or the equivalent; it may include online courses, but does
22 not include seminars.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney Jenifer J. Brannen. I understand the stipulation and the effect it will have on my Land Surveyor License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and Geologists.

DATED: 9/27/11 Original Signed
IVAN WAI-KUEN CHIU
Respondent

I have read and fully discussed with Respondent Ivan Wai-Kuen Chiu the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9-30-11 WEIL & DRAGE, APC
Original Signed
JENIFER J. BRANNEN
Attorneys for Respondent

ENDORSEMENT

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

Dated: ^{October} September 4, 2011

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

Original Signed
GILLIAN E. FRIEDMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 916-A

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16 **Civil Engineer License No. C 44672**

FIRST AMENDED ACCUSATION

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 June 26, 1992, the Board for Professional Engineers, Land Surveyors,
24 and Geologists issued Land Surveyor License Number L 6762 to Ivan Wai-Kuen Chiu
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, 2012, unless renewed.

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

10 **STATUTORY PROVISIONS**

11 5. Section 8729 subdivision (i) of the Code states in part:

12 “A current organization record form shall be filed with the board for all businesses engaged
13 in rendering professional land surveying services.”

14 6. Section 8759 of the Code states in part:

15 “(a) A licensed land surveyor . . . authorized to practice land surveying shall use a written
16 contract when contracting to provide professional services to a client pursuant to this chapter.
17 The written contract shall be executed by the licensed land surveyor . . . or his or her
18 representative, prior to the licensed land surveyor . . . commencing work, unless the client
19 knowingly states in writing that work may be commenced before the contract is executed. The
20 written contract shall include, but not be limited to, all of the following:

21

22 (3) The name, address, and license or certificate number of the licensed land surveyor . . .
23 and the name and address of the client.

24 (4) A description of the procedure that the licensed land surveyor . . . and the client will use
25 to accommodate additional services.

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

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1 7. Section 8762 of the Code states in part:

2 “(a) Except as provided in subdivision (b), after making a field survey in conformity with
3 the practice of land surveying, the licensed surveyor ... may file with the county surveyor in the
4 county in which the field survey was made, a record of the survey.

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

9

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

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

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20 “(c) The record of the survey required to be filed pursuant to this section shall be filed
21 within 90 days after the setting of boundary monuments during the performance of a field survey
22 or within 90 days after completion of a field survey, which ever occurs first.”

23 8. Section 8765 of the Code states in part:

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

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

3 9. Section 8780 of the Code states in part:

4 "The board may receive and investigate complaints against licensed land surveyors and
5 registered civil engineers, and make findings thereon.

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

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

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

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

18 **STATE REGULATORY PROVISIONS**

19 10. California Code of Regulations, title 16, section 404, states in pertinent part:

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

24

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

1 However, Respondent did not include the method for how he derived the survey results without
2 recovering any monumentation in Groton Drive. Respondent did establish lot lines and corners
3 but did not relate them to monumentation or previous surveys.

4 b. Respondent's topographic map depicts property dimensions to the hundredth of a foot
5 and includes building setback dimensions from the property line. Respondent's inclusion of
6 building setback dimensions from the property line represents the establishment of the boundary
7 in relation to the existing residence. Respondent failed to provide information that would tie his
8 survey into any previous controlling survey or monumentation, which is needed to establish the
9 boundary of the property. Respondent failed to timely file a record of his survey with the County
10 of Los Angeles.

11 c. Respondent's topographical map does not show that he located monuments on Groton
12 Drive. There is no indication on the provided topographic map that Respondent conducted an
13 analysis of the field and record data to establish the boundary line of the property on Groton
14 Drive. Lastly, Respondent did not prepare and deliver a map showing all information pertinent to
15 the establishment of the property boundary.

16 d. Respondent's survey represents the establishment of the boundary in relation to the
17 existing residence by including setback dimensions from the property line. Respondent does not
18 provide any information on how his survey ties into a previous controlling survey or monument
19 of any kind. Since Respondent's survey shows boundary, property lines, and set back
20 dimensions, he did establish lot lines and corners and it is foreseeable that his survey on its face
21 would be used to obtain approvals from the city building department, and that the city building
22 department would rely on his survey to be an accurate representation of the facts on the ground
23 obtained during his survey.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Failure to File Survey Relating to Land Boundaries & Property Lines)**

26 15. Respondent is subject to disciplinary action under section 8765, subdivision (d), in
27 that Respondent's survey required him to file a record regardless of the type of survey
28

1 Respondent purportedly performed due to his survey's establishment of the boundary in relation
2 to the existing residence by his inclusion of building setback dimensions from the property line.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to File Corner Record)**

5 16. Respondent is subject to disciplinary action under section 8765, subdivision (d), and
6 Board Rule 464(c) & (e), in that Respondent's survey required him to file a record of the survey
7 within 90 days after setting the boundary monuments or within 90 days after completion of a field
8 survey. Respondent did not timely file a record of the survey with the Los Angeles County
9 Surveyors Office. Complainant's allegations as set forth in paragraph 14, subparagraphs (a)
10 through (d) and paragraph 15, are incorporated by reference as though fully set forth.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Violation of Board Rules and Regulations)**

13 17. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
14 conjunction with California Code of Regulations section 476, subdivision (e), subparagraphs (1)
15 and (2), in that Respondent misrepresented the completeness of his survey. The circumstances are
16 as follows:

17 a. C.C.R. 476(e)(1): Respondent misrepresented the completeness of his topographical
18 map and survey that he submitted to the City of Burbank. Complainant's allegations as set forth
19 in paragraph 14, subparagraphs (a) through (d) and paragraphs 15 and 16, are incorporated by
20 reference as though fully set forth.

21 b. C.C.R. 476(e)(2): Respondent misrepresented the completeness of his topographical
22 map and survey that he prepared when another land surveyor inquired about the methods used to
23 generate Respondent's survey. Complainant's allegations as set forth in paragraphs 14,
24 subparagraphs (a) through (d), 15 and 16, are incorporated by reference as though fully set forth.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of Contract Provisions)**

3 18. Respondent is subject to disciplinary action under section 8759 subdivision (a) in that
4 his contract for surveying services of the property located at 638 Groton Drive in Burbank,
5 California, violated the written contract provisions called for in the Land Surveyor Act as follows:

6 a. 8759 (a)(3): Respondent failed to include his license number on the contract.

7 b. 8759(a)(5): Respondent failed to include a description of the procedure that
8 Respondent and the client would use to accommodate additional services.

9 c. 8759(a)(5): Respondent failed to provide information to the client regarding how to
10 terminate the contract.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 19. Respondent is subject to disciplinary action under section 8780 subdivision (h), for
14 unprofessional conduct, based on the survey Respondent performed for a property located at 638
15 Groton Drive in Burbank. Complainant's allegations as set forth in paragraphs 14 through 18,
16 inclusive, are incorporated by reference as though fully set forth.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to File Organization Record)**

19 20. Respondent is subject to disciplinary action under section 8729 subdivision (1), in
20 that Respondent failed to file a current organization record form with the Board stating that his or
21 his company perform land surveying services.

22 **PRAYER**

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

26 1. Revoking or suspending Land Surveyor License Number L 6762, issued to Ivan Wai-
27 Kuen Chiu;

1 2. Ordering Ivan Wai-Kuen Chiu to pay the Board for Professional Engineers, Land
2 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Code section 125.3; and

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

5
6 DATED: 7/6/11

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

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