

**SECOND ADDENDUM TO MEETING MATERIALS
FOR THE JUNE 25, 2020, MEETING OF THE BOARD FOR
PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

V. Consideration of Rulemaking Proposals

- A. Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria) and sections 418 and 3061 (Criteria for Rehabilitation) to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Statutes of 2018) (Possible Action)

June 22, 2020

SENT VIA EMAIL ONLY

Nancy A. Eissler
Assistant Executive Officer
Board for Professional Engineers, Land Surveyors and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, California 95833
Tel: (916) 263-2241
Email: Nancy.Eissler@dca.ca.gov

RE: Further Objections Regarding:

1. *Proposed Amendment of Section 416 of Division 5 of Title 16 of the California Code of Regulations*
2. *Proposed Amendment to Section 418 of Division 5 of Title 16 of the California Code of Regulations*
3. *Proposed Amendment to Section 3060 of Division 29 of Title 16 of the California Code of Regulations*
4. *Proposed Amendment to Section 3061 of Division 29 of Title 16 of the California Code of Regulations*

Dear Ms. Eissler:

This letter will serve as a follow up to my May 14, 2020 letter (**Exhibit 1**) wherein I objected to the above referenced proposed amendments. This letter is sent in anticipation of my comments during the June 25, 2020 meeting of the Board for Professional Engineers, Land Surveyors and Geologists (“BPELSG” or the “Board”). I will be attending and plan to comment during this upcoming meeting.

As an initial matter, please note that I did **not** receive a direct response to my carefully prepared May 14th objections. Your office did **not** send me a confirming letter that my objections had been received and your office did **not** send me your response. Instead, I had to read it in the material sent out for the public meeting on June 25, 2020. The Board staff’s failure to contact me directly is dismissive and discouraging.

Please note that my comments were submitted on May 14th, the day before the end of the comment period on May 15, 2020. See **Exhibit 2**, pg. 15, BPELSG materials stating the end of the comment period was May 15, 2020. Nevertheless, my request for a hearing was allegedly rejected by Board staff based on a

rule that was not outlined in prior Board materials. This denial along with the Board staff's refusal to address the complete substance of my objections is evidence that the Board staff has no interest in the public's input into these proposed amendments and certainly no interest in holding a public hearing on these matters. With more than 50,000 licensees and only two (2) comments to these proposed amendments, it seems that the Board staff would have been able to respond to my objections directly and specifically. These actions certainly discourage public participation in the rule making process.

For example, Board staff misinterprets my arguments regarding "due process" for licensees to be due process on the part of the Board. The Board staff states:

"If the Board denies issuing a license, the applicant has the right to appeal that denial by requesting a formal hearing that is conducted under the provision of the Administrative Procedures Act (Chapters 4, 4.5, and 5 of Part 1 of Division 3 of Title 2 of the Government Code). Likewise, if the Board pursues disciplinary action against a license, the licensee has the right to a formal hearing that is conducted under the provisions of the Administrative Procedure Act."

See **Exhibit 2**, pg. 26.

This comment totally misses the point of my objection. "Due process" in my objections clearly has to do with the licensee's criminal due process rights including the right of the licensee to have a fair criminal trial and have time to appeal a conviction before being subject to Board discipline. The Board does not consistently use the phrase "conviction of a crime" rather than just "crime" as stated extensively in my May 14, 2020 letter. See **Exhibit 1**.

In light of the Board staff's current reaction to my objections (as was the case with my prior objections to similar amendments in or around 2014 - amendments which were later withdrawn), I am sending my original May 14, 2020 letter along with your response to the California Office of Administrative Law ("OAL"). I am attaching a copy of my letter to the OAL as **Exhibit 3** for your records.

If you would like to speak to me prior to the upcoming June 25th Board meeting, please call me at (714) 403-6730.

Sincerely,

[original signed]

David E. Woolley, PLS

DEW:ldh

Enclosures

cc: Richard Moore



EXHIBIT 1

May 14, 2020

VIA EMAIL AND CERTIFIED MAIL (RETURN RECEIPT)

Nancy A. Eissler
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2535 Capitol Oaks Drive, Suite 300
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RE: Objections and Request for Hearing Regarding:

1. *Proposed Amendment of Section 416 of Division 5 of Title 16 of the California Code of Regulations*
2. *Proposed Amendment to Section 418 of Division 5 of Title 16 of the California Code of Regulations*
3. *Proposed Amendment to Section 3060 of Division 29 of Title 16 of the California Code of Regulations*
4. *Proposed Amendment to Section 3061 of Division 29 of Title 16 of the California Code of Regulations*

Dear Ms. Eissler:

As a California Professional Land Surveyor, and as a California resident, I am writing to object to the proposed amendments to Sections 416 and 418 of Division 5 of Title 16 of the California Code of Regulations and Sections 3060 and 3061 of Division 29 of Title 16 of the California Code of Regulations for the reasons set forth below. Additionally, I am requesting a formal hearing on these amendments to discuss my objections and the objections of other citizens to these proposed amendments.

After reading the proposed amendments, it is clear to me that several factors and principles have not been properly and thoroughly considered by the individuals proposing these amendments and I fear that their passage will severely hurt the ability of the Board for Professional Engineers, Land Surveyors and Geologists staff ("Board Staff") to manage licensee discipline while affording each individual the due process rights they are constitutionally guaranteed. In explaining the basis for my objections, I will point

out some fundamental principles. Principles that the Board Staff have struggled with understanding in the past.

1. In a Criminal Matter, A Person Is Innocent Until Proven Guilty in a Court of Law.

It is a fundamental principal that a person is innocent until proven guilty in a **court of law** (not a Board hearing). Due process “requires the prosecution to prove every element charged in a criminal offense beyond a reasonable doubt.” *In re Winship* (1970) 397 U.S. 358, 364). If the jury is not properly instructed concerning the presumption of **innocence** until **proven guilty** beyond a reasonable doubt, a due process denial results. [emphasis added] See *Middleton v. McNeil* (2004) 541 U.S. 433, 437. “Any jury instruction that ‘reduce[s] the level of proof necessary for the Government to carry its burden ... is plainly inconsistent with the constitutionally rooted presumption of innocence.’ ” *Cool v. United States* (1972) 409 U.S. 100, 104).

The Bill of Rights (the first 10 Amendments to the U.S. Constitution) sets forth rights of criminal defendants. Mallor, Barnes, Bowers, Langvardt, Business Law, *The Ethical, Global, and E-Commerce Environment* (15th ed. 2013) pg. 140. For example, the Fourth Amendment protects persons against arbitrary and unreasonable governmental violations of privacy rights. *Id.* The Fifth and Fourteen Amendments’ Due Process Clauses guarantee basic procedural and substantive fairness to criminal defendants. *Id.* at 152. These two (2) U.S. Constitutional Amendments require that the federal government and the states observe due process before they deprive a person of life, liberty or property. *Id.* at 76.¹ The Sixth Amendment entitles a defendant to a speedy trial by an impartial jury and guarantees to the defendant that they will be able to confront and cross-examine witnesses against them. *Id.* at 157.

a. Board Proposed Amendments Mention “Crimes”, “Professional Misconduct” and “Acts” – None Are Defined.

The fundamental legal protections mentioned above are simply not afforded to the licensee by the Board Staff in determining if a current licensee is guilty of a “crime” absent a conviction by a proper court of law. In all the proposed amendments, “crime” is not defined clearly. Is a “crime” only a conviction by a proper court of law? Is a “crime” determined by the Board? Who determines if a “crime” has been committed?

“Crime” is also not defined by the definitions contained in Section 404 of Division 5 of Title 16 of the California Code of Regulations.² See **Exhibit A**.

¹ Procedural due process establishes the procedures that the government (federal or state) must follow when it takes life, liberty or property. *Id.* at 76. Their basic premise is that an individual is entitled to notice of the government action to be taken against him/her and some sort of fair trial or hearing before the action can occur. *Id.* Substantive due process has to do with social legislation in the early 20th Century such as freedom to contract and other economic rights into the liberty and property protected by the Fifth and Fourteenth Amendments. *Id.* A land surveyor’s professional license is “property”.

² To consider a criminal act grounds for discipline, suspension or expulsion, a **conviction** is required. Cal. Bus. & Prof. Code § 490. Regarding a Board’s ability to suspend or revoke a license pursuant to California Business & Professions Code § 490, a “conviction” is defined as “a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Cal. Bus. & Prof. Code § 490(c). “An action that a Board is permitted to take following the establishment of a conviction may be taken when

Similarly, the Board Staff uses the word “professional misconduct” without providing a proper definition for this term. “Professional misconduct” is not defined in Section 404 of Division 5 of Title 16 of the California Code of Regulations. See Exhibit A. Who determines “professional misconduct”? Is it a court of law? Is it a Board proceeding? What is the proceeding? Does it protect a licensee’s U.S. Constitutional rights? We do not know because this phrase is not clearly defined. As I have personally witnessed, the Board Staff will pursue an issue, costing a licensee tens of thousands of dollars, only to realize they have no case when a judge tosses it out pre-hearing.

A review of related regulations and California Business & Professions Code do not give a definition of “professional misconduct”. To afford licensees or potential licensee’s due process and other constitutional rights, “professional misconduct” must be defined clearly. Licensees and potential licensees are not attorneys with legal research skills. This term must be clearly defined in the proposed amendments to these regulations and the term must be consistently applied to protect all licensees. The Board Staff cannot assume the power to include the term “professional misconduct” without defining it. Allowing the Board Staff this latitude conveys too much power to the Board Staff, specifically Ricard Moore, and does not afford licensees’ due process and other Constitutional rights.

Finally, “act” is not defined in the context of “a crime, professional misconduct or act”. What is an “act” that could conclude with a licensee being denied a license, suspension of a license or revocation of a license? There is absolutely no definition of this term contained in these amendments. “Act” is not defined in Section 404 of Division 5 of Title 16 of the California Code of Regulations. See Exhibit A. The Board Staff cannot assume power to interpret the word “act” in this context without giving adequate notice of its meaning to the licensee. Again, this allows the Board Staff to much latitude to define this term as it pleases and denies licensees due process and other Constitutional rights.

b. The Amendments Call for Discipline for A “Crime”, “Professional Misconduct” or “Act” But Does Not Consistently State That A Conviction Is Required.

The phrase “conviction of a crime” is crucial and the words “crimes”, “professional misconduct” and “acts” cannot substitute for the word conviction when talking about labeling someone as having committed a crime. Their due process rights would be cast aside. This is unconstitutional and would never hold up to a court challenge. However, when unconstitutional accusations are leveled against a licensee the licensee is required to hire counsel to protect these rights and defend against the misplaced allegations. Unfortunately, this has happened to licensees in the past. The proposed amendments’ inclusion of the terms “crimes”, “professional misconduct” and “acts” are wholly insufficient, vague and deny licensees due process. The amendments also allow the Board Staff an extraordinary amount of power in determining what is a “crime” without requiring a conviction. While “conviction of a crime”

the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.” Cal. Bus. & Prof. Code § 490(c).

appears in some places in the amendments, “crime”, “professional misconduct” and “acts” negate this phrase because these terms are not properly defined in the amendments.

Additionally, Section 416 (c) and Section 3060 (c) proposed amendments state:

*“For the purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, **but are not limited to**, the following” [emphasis added]*

This language gives too much leeway to the Board Staff to include anything it wants to include. Again, this violates licensees’ due process rights because they are not given forewarning of what types of conduct could be subject to discipline. This is a further failing of these proposed amendments.

While proponents of these amendments may point to the similarities between the proposed language of “crimes and acts” and California Business & Professions Code § 480, there are significant differences. First, Section 480 deals with the denial of a license to a first time licensee who has less vested interest in his/her license than an existing licensee already earning a living in that profession. Secondly, Section 490 of the same Business & Professions Code requires **conviction of a crime** (not “crimes”, “professional misconduct” or “acts”) to suspend or revoke the license of a current licensee – thus reflecting a higher standard for existing licensees’ protection. Certainly, there is no language such as “but are not limited to” thereby opening this regulation to anything the Board Staff wants to include as a “crime”, “professional misconduct” or “act”. This is unacceptable.

c. The “Number of Years Elapsed Since Date of the Offense” Criteria Is Vague and Does Not Consider California Statutes of Limitations.

In the “Substantial Relationship Criteria” stated in Sections 416(b) and 3060(b), the proposed amendments state:

“In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider the following criteria:

- (2) *The number of years elapsed since the date of the offense”*

How many years back will the Board Staff consider? Is any deference given to the California statutes of limitations for causes of actions against licensees? As explained in the California Legislative Counsel’s Opinion dated April 29, 2008, entitled Statute of Limitations: Land Surveyors - #0806551, and authored by Sheila R. Mohan, Deputy Legislative Counsel, the statute of limitations issues related to professional land surveyors are complex and require analysis. See **Exhibit B**, copy of Legislative Counsel’s Opinion. Was any consideration given to the statute of limitations in drafting these proposed amendments? As stated, the proposed amendments are simply too vague in this regard. Additionally, a land surveyor’s error can rest undiscovered for years, sometimes decades, before being discovered. However, once discovered, the error sets the table for members of the public to be thrown into expensive litigation. The fact a survey was performed a number of years prior should be of no consideration in the disciplinary

process. To afford any weight or consideration as to when the error or violation occurred in time is a disservice to the public the Board is charged with protecting.

2. A Crime, Professional Misconduct or Act Must Substantially Relate to the Qualifications, Functions or Duties of the Professional for Whom the License Was Issued.

As stated above, the “crimes”, “professional misconduct” and “acts” being considered by the Board and Board Staff must substantially relate to the qualifications, functions or duties of the business or profession for which the license was issued. This is true for existing licensees facing suspension or revocation (Cal. Bus. & Prof. Code § 490(a) and new applicants for licensure (Cal. Bus. & Prof. Code 480(B). Furthermore, Cal. Bus. & Prof. Code § 481 also requires that a “*crime or act substantially relate to the qualifications, functions, or duties of the business or profession it regulates.*” Again, the proposed language says “crimes”, “professional misconduct “ or “acts” without further definition. This is a huge mistake. To call this a mistake is being polite – it is unlikely a mistake because this has been reoccurring pattern.

3. These Proposed Amendments Are “Underground Regulations”.

These proposed amendments, adding of language to existing regulations, are not supposed to broaden the Executive Officer's authority – this can only be done by statute. In the law, regulations clarify and provide for processes to implement statutes passed by the Legislature and signed by the Governor. Regulations cannot give broadened authority to the Board’s Executive authority without authorization by statute. Allowing the Board to expand its authority with these proposed amendments amounts to improper “underground legislation”. According to the California Government Code § 11342.600:

“Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it or to govern its procedure.” [emphasis added]

According to the California Office of Administrative Law:

“State agencies, with few exceptions, are required to adopt regulations following the procedures established in the Administrative Procedures Act . . . If a state agency issues, utilizes, enforces, or attempts to enforce a rule without following the APA when it is required to, the rule is called an “underground regulation”. State agencies are prohibited from enforcing underground regulations”³

4. Conclusion.

All these vague terms allow the Board Staff too much power in determining discipline for licensees. In the past, the Board and Board Staff has attempted to broaden its regulatory power without giving licensees

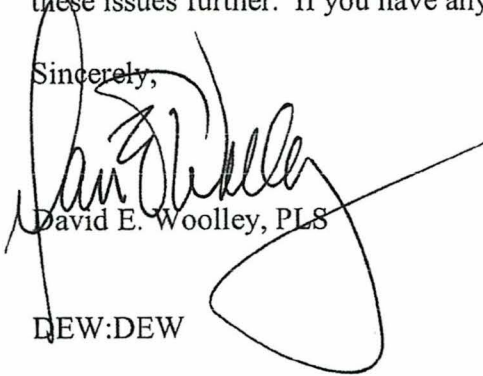
³ https://oal.ca.gov/underground_regulations/

proper definitions for terms contained in its proposed amendments. The vagueness of these terms allow the Board Staff to pick which licensees it will pursue for misconduct. This vagueness also allows the Board Staff to pick favorites when deciding discipline for licensees - a practice that I have witnessed and long opposed.

In closing, I caution all concerned not to allow the Board Staff authority to pursuing taking away licenses using vague terms and without the court's protection. This is a mistake and personally, makes me wonder about the underlying motivations of the Board Staff in suggesting these proposed amendments. To this end, I am requesting a the proposed regulation process is stopped now. Also, I am requesting a hearing on the proposed changes if they are to move forward.

For all of these reasons, I object to these amendments and request a formal hearing to discuss and debate these issues further. If you have any questions about my request, please call me at (714) 403-6730.

Sincerely,



David E. Woolley, PLS

DEW:DEW

Enclosures

cc: Richard Moore



EXHIBIT A

Barclays Official California Code of Regulations <small>Currentness</small>
Title 16. Professional and Vocational Regulations
Division 5. Board for Professional Engineers and Land Surveyors
Article 1. General Provisions (Refs & Annos)

16 CCR § 404

§ 404. Definitions.

For the purpose of the rules and regulations contained in this chapter, the following terms are defined. No definition contained herein authorizes the practice of professional engineering as defined in the Professional Engineers Act.

(a) "ABET" means ABET, Inc., formerly known as the Accreditation Board for Engineering and Technology.

(b) "Agricultural engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand and apply engineering principles to the design, construction, and use of specialized equipment, machines structures and materials relating to the agricultural industry and economy. It requires knowledge of the engineering sciences relating to physical properties and biological variables of foods and fibers; atmospheric phenomena as they are related to agricultural operations; soil dynamics as related to traction, tillage and plant-soil-water relationships; and human factors relative to safe design and use of agricultural machines. The safe and proper application and use of agricultural chemicals and their effect on the environment are also concerns of the agricultural engineers. The above definition of agricultural engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering, nor professional forestry.

(c) "Approved Cooperative Work-Study Engineering Curriculum" refers to any curriculum under an ABET accredited cooperative work-study engineering program.

(d) "Approved Cooperative Work-Study Land Surveying Curriculum" refers to any curriculum under an ABET accredited cooperative work-study surveying program.

(e) "Approved Engineering Curriculum" refers to any curriculum under an ABET accredited engineering program leading to a baccalaureate degree in engineering.

(f) "Approved Engineering Technology Curriculum" refers to any curriculum under an ABET accredited engineering program leading to a four-year degree or a baccalaureate degree in technology.

(g) "Approved Land Surveying Curriculum" refers to any curriculum under an ABET accredited program leading to a baccalaureate degree.

(h) "Approved Post-Graduate Engineering Curriculum" refers to any curriculum under an ABET accredited engineering program leading to a master's degree in engineering or to a post-graduate degree earned from an engineering program where the baccalaureate degree program is accredited by ABET.

(i) "Board" means the Board for Professional Engineers, Land Surveyors, and Geologists.

(j) "Chemical engineering" is that branch of professional engineering which embraces studies or activities relating to the development and application of processes in which chemical or physical changes of materials are involved. These processes are usually resolved into a coordinated series of unit physical operations and unit chemical processes. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above. The above definition of chemical engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering.

(k) "Civil engineer" refers to a person who holds a valid license in the branch of civil engineering, as defined in Section 6702 of the Code.

(l) "Civil engineering" is that branch of professional engineering as defined in Section 6731 of the Code.

(m) "Code" means the Business and Professions Code.

(n) "Consulting engineer" refers to any professional engineer who holds a valid license under the provisions of the code, or a person who possesses a valid authorization issued pursuant to Section 6732.2 of the Code, or a person who holds a valid exemption from provisions of the chapter as provided for in Sections 6704 and 6732.1 of the Code.

(o) "Control system engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand the science of instrumentation and automatic control of dynamic processes; and requires the ability to apply this knowledge to the planning, development, operation, and evaluation of systems of control so as to insure the safety and practical operability of such processes. The above definition of control system engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(p) "Corrosion engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand the environmental corrosion behavior of materials; and requires the ability to apply this knowledge by recommending procedures for control, protection and cost effectiveness, resulting from the investigation of corrosion causes

§ 404. Definitions., 16 CA ADC § 404

or theoretical reactions. The above definition of corrosion engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(q) "Electrical engineer" refers to a person who holds a valid license in the branch of electrical engineering, as defined in Section 6702.1 of the Code.

(r) "Electrical engineering" is that branch of professional engineering as defined in Section 6731.5 of the Code.

(s) "Engineer-in-training" refers to a person who has been granted a certificate as an "engineer-in-training" in accordance with Section 6756 of the Code.

(t) "Fire protection engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand the engineering problems relating to the safeguarding of life and property from fire and fire-related hazards; and requires the ability to apply this knowledge to the identification, evaluation, correction, or prevention of present or potential fire and fire related panic hazards in buildings, groups of buildings, or communities, and to recommend the arrangement and use of fire resistant building materials and fire detection and extinguishing systems, devices, and apparatus in order to protect life and property. The above definition of fire protection engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(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.

(v) "Industrial engineering" is that branch of professional engineering which requires such education and experience as is necessary to investigate, to design, and to evaluate systems of persons, materials and facilities for the purpose of economical and efficient production, use, and distribution. It requires the application of specialized engineering knowledge of the mathematical and physical sciences, together with the principles and methods of engineering analysis and design to specify, predict, and to evaluate the results to be obtained from such systems. The above definition of industrial engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(w) "Land surveying" is that practice defined in Section 8726 of the Code.

(x) "Land surveyor" refers to a person who holds a valid license as a land surveyor, as defined in Section 8701 of the Code.

(y) "Land surveyor-in-training" refers to a person who has been granted a certificate as a "land surveyor-in-training" in

§ 404. Definitions., 16 CA ADC § 404

accordance with Section 8747(a) of the Code.

(z) "Manufacturing engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand and apply engineering procedures in manufacturing processes and methods of production of industrial commodities and products; and requires the ability to plan the practices of manufacturing, to research and develop the tools, processes, machines, and equipment, and to integrate the facilities and systems for producing quality products with optimal expenditure. The above definition of manufacturing engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(aa) "Mechanical engineer" refers to a person who holds a valid license in the branch of mechanical engineering, as defined in Section 6702.2 of the Code.

(bb) "Mechanical engineering" is that branch of professional engineering as defined in Section 6731.6 of the Code.

(cc) "Metallurgical engineering" is that branch of professional engineering, which requires such education and experience as is necessary to seek, understand and apply the principles of the properties and behavior of metals in solving engineering problems dealing with the research, development and application of metals and alloys; and the manufacturing practices of extracting, refining and processing of metals. The above definition of metallurgical engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(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.

(ee) "Non-Approved Engineering Curriculum" refers to any engineering program that has not been accredited by ABET.

(ff) "Non-Approved Land Surveying Curriculum" refers to any land surveying program that has not been accredited by ABET.

(gg) "Nuclear engineering" is that branch of professional engineering which requires such education and experience as is necessary to apply the principles of nuclear physics to the engineering utilization of nuclear phenomena for the benefit of mankind; it is also concerned with the protection of the public from the potential hazards of radiation and radioactive materials. Nuclear engineering is primarily concerned with interaction of radiation and nuclear particles with matter. Nuclear engineering requires the application of specialized knowledge of the mathematical and physical sciences, together with the principles and methods of engineering design and nuclear analysis to specify, predict and evaluate the behavior of systems involving nuclear reactions, and to ensure the safe, efficient operation of these systems, their nuclear products and by-products. Nuclear engineering encompasses, but is not limited to, the planning and design of the specialized equipment and process systems of

§ 404. Definitions., 16 CA ADC § 404

nuclear reactor facilities; and the protection of the public from any hazardous radiation produced in the entire nuclear reaction process. These activities include all aspects of the manufacture, transportation and use of radioactive materials. The above definition of nuclear engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(hh) "Petroleum engineering" is that branch of professional engineering which embraces studies or activities relating to the exploration, exploitation, location, and recovery of natural fluid hydrocarbons. It is concerned with research, design, production, and operation of devices, and the economic aspects of the above. The above definition of petroleum engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(ii) "Professional engineer" refers to a person engaged in the practice of professional engineering as defined in Section 6701 of the Code.

(jj) "Professional engineering" within the meaning of this chapter comprises the following branches: agricultural engineering, chemical engineering, civil engineering, control systems engineering, corrosion engineering, electrical engineering, fire protection engineering, industrial engineering, manufacturing engineering, mechanical engineering, metallurgical engineering, nuclear engineering, petroleum engineering, quality engineering, safety engineering, and traffic engineering.

(kk) "Quality engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand and apply the principles of product and service quality evaluation and control in the planning, development and operation of quality control systems, and the application and analysis of testing and inspection procedures; and requires the ability to apply metrology and statistical methods to diagnose and correct improper quality control practices to assure product and service reliability and conformity to prescribed standards. The above definition of quality engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(ll) "Safety engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand the engineering principles essential to the identification, elimination and control of hazards to people and property; and requires the ability to apply this knowledge to the development, analysis, production, construction, testing, and utilization of systems, products, procedures and standards in order to eliminate or optimally control hazards. The above definition of safety engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(mm) "Soil engineer" refers to a civil engineer who holds a valid authorization to use the title "soil engineer," as provided in Section 6736.1 of the Code.

(nn) "Soil engineering," as it relates to the authorization to use the title "soil engineer," is the investigation and engineering evaluation of earth materials including soil, rock, groundwater and man-made materials and their interaction with earth retention systems, structural foundations and other civil engineering works. The practice involves application of the principles of soil mechanics and the earth sciences, and requires a knowledge of engineering laws, formulas, construction techniques and performance evaluation of civil engineering works influenced by earth materials.

The terms “geotechnical engineer” and “soils engineer” are deemed to be synonymous with the term “soil engineer.”

(oo) “Structural engineer” refers to a civil engineer who holds a valid authorization to use the title “structural engineer.” as provided in Section 6736 of the Code.

(pp) “Structural engineering” for the purposes of structural authority is the application of specialized civil engineering knowledge and experience to the design and analysis of buildings (or other structures) which are constructed or rehabilitated to resist forces induced by vertical and horizontal loads of a static and dynamic nature. This specialized knowledge includes familiarity with scientific and mathematical principles, experimental research data and practical construction methods and processes. The design and analysis shall include consideration of stability, deflection, stiffness and other structural phenomena that affect the behavior of the building (or other structure).

(qq) “Traffic engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the science of measuring traffic and travel and the human factors relating to traffic generation and flow; and requires the ability to apply this knowledge to planning, operating, and evaluating streets and highways and their networks, abutting lands and interrelationships with other modes of travel, to provide safe and efficient movement of people and goods. The above definition of traffic engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

Note: Authority cited: Sections 6716, 6717, 6751.5 and 8710, Business and Professions Code. Reference: Sections 6701, 6702, 6702.1, 6702.2, 6704, 6706.3, 6710, 6730, 6731, 6731.5, 6731.6, 6732, 6732.1, 6732.2, 6732.3, 6734, 6734.1, 6734.2, 6736, 6736.1, 6751, 6751.2, 6751.5, 6753, 6756, 6763, 6775, 8701, 8726, 8741, 8742, 8747 and 8780, Business and Professions Code.

HISTORY

1. Editorial correction of subsection (z) (Register 75, No. 50). For prior history, see Register 75, No. 10.
2. New subsection (g-g) filed 2-10-76; effective thirtieth day thereafter (Register 76, No. 7).
3. Amendment of subsection (o) filed 1-12-77; effective thirtieth day thereafter (Register 77, No. 3).
4. Amendment of subsection (e) and repealer of subsection (g-g) filed 7-3-80; effective thirtieth day thereafter (Register 80, No. 27).
5. Amendment filed 8-10-83; effective thirtieth day thereafter (Register 83, No. 33).

§ 404. Definitions., 16 CA ADC § 404

6. Amendment filed 6-26-86; designated effective 7-1-86 (Register 86, No. 26).

7. Amendment of subsection (ff) filed 9-25-89; operative 10-25-89 (Register 89, No. 40).

8. Change without regulatory effect amending section and Note filed 4-19-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 17).

9. Amendment of subsection (k), new subsections (n) and (w), subsection relettering, amendment of newly designated subsection (u) and amendment of Note filed 3-13-2003; operative 4-12-2003 (Register 2003, No. 11).

10. Change without regulatory effect amending subsection (b) filed 2-23-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 8).

11. New subsections (a), (c)-(h) and (ee)-(ff), subsection relettering and amendment of Note filed 4-11-2011; operative 5-11-2011 (Register 2011, No. 15).

This database is current through 5/1/20 Register 2020, No. 18

16 CCR § 404, 16 CA ADC § 404

End of Document

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EXHIBIT B

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April 29, 2008

Honorable Noreen Evans
Room 3152, State Capitol

STATUTE OF LIMITATIONS: LAND SURVEYORS - #0806551

Dear Ms. Evans:

You have asked the following questions:

1. What are the applicable statutes of limitation that would apply to a cause of action for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon?

2. Is there a maximum period of time, or statute of repose, after which a land surveyor may not be held liable for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon?

By way of background, land surveyors are licensed pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, to perform various services that locate and measure the size and dimensions of real property (see Sec. 8726, B.P.C.). A licensed land surveyor is required to use a written contract when contracting to provide professional services to a client, subject to specified exemptions (Sec. 8759, B.P.C.). These services may or may not result in any physical improvement to, or construction upon, the real property for which the land surveyor performs services, for example, lot-line adjustments or corner-records, but may result in a written document being produced by the surveyor and given to the client.

There is no special statute of limitations for damages to unimproved property. Rather, Chapter 3 (commencing with Section 335) of Title 2 of Part 2 of the Code of Civil



Procedure¹ sets forth different statutes of limitation that may apply depending on the theory of recovery.

In this regard, Sections 335, 337, 338, and 339 provide, in pertinent part, as follows:

“335. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:”

“337. Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing... .

“338. Within three years:

“(b) An action for trespass upon or injury to real property.

“339. Within two years: 1. An action upon a contract, obligation or liability not founded upon an instrument of writing

Thus, a cause of action based upon a written contract, such as a breach of contract, must be brought within four years (para. (1), Sec. 337). The claim accrues when the plaintiff discovers, or could have discovered through reasonable diligence, the injury and its cause (*Angeles Chem. Co. v. Spencer & Jones* (1996) 44 Cal.App.4th 112, 119). A cause of action based upon an oral contract must be brought within two years of the discovery of the loss or damage (Sec. 339). A cause of action to recover damages for injury to real property, for example, by negligence, must be brought within three years (subd. (b), Sec. 338). The claim commences to run when the plaintiff knows, or should have known, of the wrongful conduct at issue (*Angeles Chem. Co. v. Spencer & Jones*, supra, at p. 119).

In addition, statutes of repose set outside limits to liability for services performed in connection with the construction of an improvement to real property.

In this regard, Sections 337.1 and 337.15 provide, in pertinent part, as follows:

“337.1. (a) Except as otherwise provided in this section, no action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following:

¹ All further section references are to the Code of Civil Procedure, unless otherwise specified.

"(1) Any patent deficiency in the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to, or survey of, real property;

"(2) Injury to property, real or personal, arising out of any such patent deficiency; or

"(3) Injury to the person or for wrongful death arising out of any such patent deficiency.

"(b) If, by reason of such patent deficiency, an injury to property or the person or an injury causing wrongful death occurs during the fourth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than five years after the substantial completion of construction of such improvement.

"(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

"(d) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

"(e) As used in this section, 'patent deficiency' means a deficiency which is apparent by reasonable inspection.

"(f) Subdivisions (a) and (b) shall not apply to any owner-occupied single-unit residence." (Emphasis added.)

"337.15. (a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following:

"(1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property.

"(2) Injury to property, real or personal, arising out of any such latent deficiency.

"(b) As used in this section, 'latent deficiency' means a deficiency which is not apparent by reasonable inspection.

"(c) As used in this section, 'action' includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this section, except that a cross-complaint for

indemnity may be filed pursuant to subdivision (b) of Section 428.10 in an action which has been brought within the time period set forth in subdivision (a) of this section.

“(d) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for bringing any action.

“(e) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to bring an action.

“(f) This section shall not apply to actions based on willful misconduct or fraudulent concealment.

“(g) The 10-year period specified in subdivision (a) shall commence upon substantial completion of the improvement, but not later than the date of one of the following, whichever first occurs:

“(1) The date of final inspection by the applicable public agency.

“(2) The date of recordation of a valid notice of completion.

“(3) The date of use or occupation of the improvement.

“(4) One year after termination or cessation of work on the improvement.

“The date of substantial completion shall relate specifically to the performance or furnishing design, specifications, surveying, planning, supervision, testing, observation of construction or construction services by each profession or trade rendering services to the improvement.” (Emphasis added.)

Thus, a cause of action to recover for damages to real property caused by a patent defect in the construction of an improvement to the property must be brought within four years after the substantial completion of the improvement (subd. (a), Sec. 337.1).² Similarly, a cause of action to recover for damages to real property caused by a latent defect in the construction of an improvement to the property must be brought within 10 years after the substantial completion of the improvement (subd. (a), Sec. 337.15).³

² This limitation, however, may not be asserted as a defense by any person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time a deficiency in the improvement causes injury or death, and does not apply to any owner-occupied single-unit residence (subds. (d) and (f), Sec. 337.1). The limitation may be extended to five years when the injury or wrongful death occurs during the fourth year after substantial completion (subd. (b), Sec. 337.1).

³ This limitation, however, may not be asserted as a defense by any person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time a deficiency in the improvement causes injury or death, and does not apply to actions based on willful misconduct or fraudulent concealment (subds. (e) and (f), Sec. 337.15). A cross-complaint for indemnity may

(continued...)

The statutes of limitation and the statutes of repose are not mutually exclusive, and must both be considered in determining the viability of a claim. With regard to a claim based on a latent defect, the California Supreme Court has stated as follows:

"[A] suit to recover for a construction defect generally is subject to limitations periods of three or four years, depending on whether the theory is breach of warranty (§ 337, subd. 1 [four years: 'action upon any contract, obligation or liability founded upon an instrument in writing']) or tortious injury to property (§ 338, subs. (b), (c) ... [three years: trespass or injury to real or personal property]). However, these periods begin to run only when the defect would be discoverable by reasonable inspection. (*Regents, supra*, at p. 630.) On the other hand, 'section 337.15 ... imposed an absolute requirement that a suit ... to recover damages for a [latent] construction defect be brought within 10 years of the date of substantial completion of construction, regardless of the date of discovery of the defect.' (*Regents, supra*, at p. 631, fn. omitted.) 'The interplay between these statutes sets up a two-step process: (1) actions for a latent defect must be filed within three years ... or four years ... of discovery, but (2) in any event must be filed within ten years ... of substantial completion.' (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 27.)" (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 369-370, citing *Regents of University of Cal. v. Hartford Acci. & Indem. Co.* (1978) 21 Cal.3d 624, 630-631; hereafter *Regents*).

Thus, it is a two-step analysis in first determining whether any applicable statutes of limitation have run, and then whether the claim has been extinguished by the running of the period of repose.⁴

The question that arises is whether the provision of land surveyor services, without any physical improvement to, or construction upon, the real property is an "improvement" for purposes of Sections 337.1 and 337.15. These statutes do not define "improvement." If something is physically constructed to completion on the property, it is likely safe to conclude that it is an improvement. However, at what point does the rendering of construction services, including land surveyor services, become an improvement for purposes of these statutes?

The term "improvement," as used in Section 337.15, has been given a very broad interpretation (*Gaggero v. County of San Diego* (2004) 124 Cal.App.4th 609, 615-618 (hereafter

(...continued)

be filed in an action that has been brought within the 10-year time period (subd. (c), Sec. 337.15). Also, common interest developments and residential units first sold after January 1, 2003, are subject to separate statutes affecting the applicable limitations periods for suit upon latent defects in those projects (see Sec. 895 and following, and Secs. 941 and 1375, Civ. C.).

⁴The First District Court of Appeal has held that *Regents'* two-step analysis also applies to Section 337.1 relative to patent defects (*Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc.* (2001) 89 Cal.App.4th 638).

Gaggero), in which the court held that a landfill constituted an improvement within the meaning of Section 337.15):

“As used in section 337.15 ‘an improvement’ is in the singular and refers separately to each of the individual changes or additions to real property that qualifies as an ‘improvement’ irrespective of whether the change or addition is grading and filling, putting in curbs and streets, laying storm drains or of other nature.” (Gaggero, supra, at p. 616, citing *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 771.)

Thus, the term “improvement” has been construed to refer separately to each of the individual changes or additions to real property. However, some language in Gaggero, which involved structural damage due to subsidence at a former county landfill, makes ambiguous the extension of its holding to property that is not physically improved or constructed upon:

“While the county’s primary goal may not have been to obtain a profit from eventual sale of the landfill, in filling it, covering it and selling it, the county was engaged in making the real property suitable for further use by others. Section 337.15 and the cases which have interpreted it make it clear, in enacting the statute, the Legislature’s unambiguous intention was to put a temporal limit on liability for individuals and entities engaged in these sorts of purposeful alterations to and transfers of real property.” (Gaggero, supra, at p. 618).

Thus, the court in Gaggero identified physical changes to the land, “in making the real property suitable for further use by others,” as part of the “purposeful alterations” that led the court to conclude that the landfill constituted an improvement within the meaning of Section 337.15.

Nonetheless, the case law makes it abundantly clear that the legislative intent in enacting Sections 337.1 and 337.15 was to limit liability exposure to a finite period of time for certain activities in association with making improvements to real property:

“[I]t appears the Legislature enacted section 337.1 in 1967 in response to the construction industry’s fear that it could face virtually unending liability due to the advent of discovery-based accrual rules for statutes of limitation. ... Thus, the purpose of section 337.1 was not to promote harmony among contractors during construction, but rather ‘to prevent “uncertain liability extending indefinitely into the future.” ...’ (Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc., supra, at pp. 646-647, citing *Regents*, supra, at p. 633, fn. 2).

“Numerous opinions have noted that the purpose of section 337.15 is to shield members of the construction industry from liability of indefinite duration for property damage caused by their work.” (*Industrial Risk Insurers v. Rust Engineering Co.* (1991) 232 Cal.App.3d 1038, 1043).

“Section 337.15 clearly and unambiguously expresses a legislative intent to put a 10-year limit on latent deficiency liability exposure for ‘any person’ performing certain activities in making improvements to real property. Among

the activities covered by the statute are performing or furnishing the design or specifications of the improvement." (*Gaggero, supra*, at p. 617, citing *Magnuson-Hoyt v. County of Contra Costa* (1991) 228 Cal.App.3d 139, 143-144.)

Because surveyor services are expressly included among the construction services subject to Sections 337.1 and 337.15 (subd. (a), Sec. 337.1 and subd. (a), Sec. 337.15), it follows that those services are among those for which the Legislature intended to limit liability exposure to a finite period of time in enacting those statutes.

Moreover, while the statutes of limitation commence to run based on the discovery of the loss or injury, as described above, the statutes of repose commence to run upon "the substantial completion of the improvement" (*Ibid.*). Substantial completion has been construed, for purposes of Section 337.15, to commence as to each profession on the date its services to the improvement are substantially complete:

"[T]he last sentence of Code of Civil Procedure section 337.15, subdivision (g) 'relates' the concept of substantial completion to services rendered to an improvement, and it relates this concept 'specifically' to the services rendered by 'each' profession. ... [T]he reasonably plain meaning of this sentence is that the limitations period commences as to each profession on the date its services to the improvement are substantially complete.

* * *

"A defendant's services with respect to an improvement may be completed well before the improvement itself is finished. If the limitations period does not commence until substantial completion of the improvement, construction industry members may be subject to liability for an indefinite time over 10 years after the substantial completion of their work. We do not believe that this was what the Legislature intended when it added subdivision (g) to the statute in 1981." (*Industrial Risk Insurers v. Rust Engineering Co.*, *supra*, at pp. 1042-1044)

Thus, for purposes of Section 337.15, and consistent with the legislative intent to limit liability to a finite period as described above, substantial completion commences as to each profession on the date its services to the improvement are substantially complete.

It is critical to note that no court has addressed the particular fact pattern at issue in this opinion, in which land surveyor services are performed on real property that is not otherwise physically improved or constructed upon. Significantly, as set forth above, the courts have repeatedly returned to legislative intent with each expansion of the statutes. In light of the foregoing case law, we think it would be inconsistent with the Legislature's clear intent to limit liability for construction services to a finite period, either four years or 10 years, if Sections 337.1 and 337.15 did not apply to land surveyor services as an improvement, even if there is no other physical improvement to, or construction upon, the real property. However, we must emphasize that the statutes on their face are not entirely clear, and that neither the statutes nor the case law are dispositive.

If faced with the fact pattern at issue in this opinion, we think the better construction would be to find that land surveyor services in themselves, without additional physical improvements or construction services being rendered, would constitute an "improvement" for purposes of Sections 337.1 and 337.15.

Accordingly, we conclude that a cause of action for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon, is subject to the two, three, and four year statutes of limitation described above, depending on the theory of recovery, but in any event, must be filed within four or 10 years of substantial completion of the services under the statutes of repose. Also, the maximum period of time for which a land surveyor may be held liable for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon, is 4 or 10 years from the substantial completion of the services.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

Sheila R. Mohan

By
Sheila R. Mohan
Deputy Legislative Counsel

SRM:ckt

EXHIBIT 3

June 22, 2020

SENT VIA EMAIL AND CERTIFIED MAIL (RETURN RECEIPT)

Reference Attorney/Staff
California Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814
Tel: (916) 323-6225
Email: staff@oal.ca.gov

RE: Objections Regarding:

1. *Proposed Amendment of Section 416 of Division 5 of Title 16 of the California Code of Regulations*
2. *Proposed Amendment to Section 418 of Division 5 of Title 16 of the California Code of Regulations*
3. *Proposed Amendment to Section 3060 of Division 29 of Title 16 of the California Code of Regulations*
4. *Proposed Amendment to Section 3061 of Division 29 of Title 16 of the California Code of Regulations*

Dear Office of Administrative Law:

I am writing to you as a California Licensed Land Surveyor and as a member of the public regarding objections to the proposed amendments to the California Code of Regulations as listed above. I properly served my objections to the Board for Professional Engineers, Land Surveyors and Geologists (the "Board") on May 14, 2020 (due date May 15, 2020) prior to the Board's public meeting scheduled for June 25, 2020. I will be attending and commenting at this meeting.

I am requesting that your office review and issue guidance on the following materials:

- **Exhibit 1** - copy of my May 14, 2020 Objections and Request for Hearing.

- **Exhibit 2** – copy of the Board staff’s response as contained in the June 25, 2020 meeting materials.¹
- **Exhibit 3** – copy of my June 22, 2020 Further Objections sent to Board staff.

I would appreciate the Office of Administrative Law (“OAL”) reviewing both my objections and the Board staff’s response to objections and give me your legal opinion as to the propriety of the proposed amendments. For all the reasons set forth in my objections on May 14, 2020 (**Exhibit 1**), I believe the Board staff’s analysis is incorrect. Without rewriting my entire legal analysis here, I will point to one example of the Board staff’s complete misunderstanding of my arguments. Board staff misinterprets my arguments regarding “due process” for licensees to be due process on the part of the Board. The Board staff states:

“If the Board denies issuing a license, the applicant has the right to appeal that denial by requesting a formal hearing that is conducted under the provision of the Administrative Procedures Act (Chapters 4, 4.5, and 5 of Part 1 of Division 3 of Title 2 of the Government Code). Likewise if the Board pursues disciplinary action against a license, the licensee has the right to a formal hearing that is conducted under the provisions of the Administrative Procedure Act.”

See **Exhibit 2**, pg. 26.

This comment totally misses the point of my objection. “Due process” in my objections clearly has to do with the licensee’s criminal due process rights including the right of the licensee to have a fair criminal trial and have time to appeal a conviction before being subject to Board discipline. The Board does not consistently use the phrase “conviction of a crime” rather than just “crime” as stated extensively in my May 14, 2020 letter. See **Exhibit 1**.

The Board staff rejected my request for a public hearing specifically devoted to my objections. This denial, along with the Board staff’s refusal to address the complete substance of my objections, is evidence that the Board staff has no interest in the public’s input into these proposed amendments and certainly no interest in holding a public hearing on these matters. With more than 50,000 licensees and only two (2) comments to these proposed amendments, it seems that the Board staff would have been able to respond to my objections directly and specifically. These actions certainly discourage public participation in the rule making process.

¹ As an initial matter, please note that I did **not** receive a direct response to my carefully prepared May 14th objections. Board staff did **not** send me a confirming letter that my objections had been received and did **not** send me their response addressed to my objections. Instead, I had to read it in the material sent out for the public meeting on June 25, 2020. The Board staff’s failure to contact me directly is dismissive and discouraging.

In light of the Board staff's current dismissive reaction to my objections (as was the case with my prior objections to similar amendments in or around 2014 - amendments which were later withdrawn), I am requesting that the Office of Administrative Law take a look at these proposed amendments, my objections and the Board staff's response and issue an opinion as to whether the proposed amendment are proper pursuant to California statutes and regulations.

If you would like to speak to me, please call me at (714) 403-6730.

Sincerely,

[original signed]

David E. Woolley, PLS

DEW:ldh

Enclosures

