

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

In the Matter of the Petition to Revoke Probation	)	
Against:	)	
	)	
PAUL ALLEN GILLESPIE	)	Case No. 1163-A
1400 N Tully Road	)	
Turlock, CA 95380	)	OAH No. 2021120596
	)	
Civil Engineer License, No. C 25451,	)	
	)	
Respondent.	)	
_____	)	

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on June 2, 2022.

IT IS SO ORDERED May 2, 2022.

*Original Signed*  
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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 Petition to Revoke Probation Against:**

**PAUL ALLEN GILLESPIE, Respondent**

**Agency Case No. 1163-A**

**OAH No. 2021120596**

**PROPOSED DECISION**

Administrative Law Judge (ALJ) Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on January 14, 2022.

Deputy Attorney General Kevin W. Bell represented complainant Richard B. Moore, PLS, Executive Officer, Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs.

Paul Allen Gillespie (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on January 14, 2022.

**FACTUAL FINDINGS**

## **License and Disciplinary History**

1. On June 11, 1975, the Board issued Civil Engineer License No. C 25451 (license) to respondent. The license was in full force and effect at all times relevant to the subject petition, and will expire on December 31, 2023, unless renewed.

2. On September 1, 2017, complainant filed the Accusation in Case No. 1163-A, alleging that respondent's license was subject to discipline for unprofessional conduct on the following grounds: (1) Negligence, pursuant to Business and Professions Code section 6775, subdivision (c), as defined in California Code of Regulations, section 404, subdivision (dd), for failing to use the care ordinarily exercised by licensed professional engineers regarding his work on several residential projects from July 2015 through December 2015; (2) Failure to use a written contract, pursuant to Business and Professions Code, section 6749, subdivision (a), when contracting to provide services to a client on or about December 3, 2015; and (3) Failure to include date of signing and sealing of engineering documents, pursuant to Business and Professions Code section 6735, and California Code of Regulations, section 411, for failing to date engineering documents immediately below or next to the signature and seal set forth therein. Respondent timely filed a Notice of Defense to the Accusation and requested a hearing to allow him to challenge the merits of the proposed disciplinary action.

3. On March 2, 2018, after a full hearing on the merits, in a disciplinary action titled "In the Matters of the Accusation Against Paul Allen Gillespie," Case No. 1163-A, ALJ Marcie Larson issued a proposed decision (Decision) revoking respondent's license. However, the revocation of the license was immediately stayed for three years, subject to certain probationary terms and conditions. On May 3, 2018, the Board adopted the Decision, effective June 8, 2018.

4. The terms and conditions of respondent's probation include:

[¶] ... [¶]

**Condition 5.** No later than 60 days prior to the end of the period of probation, respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.

[¶] ... [¶]

**Condition 7.** Respondent shall pay the Board's costs associated with its investigation and prosecution pursuant to Business and Professions Code section 125.3 in the amount of \$10,423.95. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than 90 days prior to the end of the period of probation.

[¶] ... [¶]

**Condition 8.** 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 [the] 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.

## **Petition to Revoke Probation**

5. Prior to June 8, 2021, the Board submitted the matter to the Office of the Attorney General for the filing a petition to revoke respondent's probation due to his failure to comply with Conditions 5 and 7. On June 10, 2021, complainant made and filed the Petition to Revoke Probation in his official capacity.

## **Complainant's Evidence**

6. Angela Smith works as an Enforcement Analyst for the Board and has been respondent's probation monitor since he was placed on probation. On June 18, 2018, Ms. Smith sent respondent a letter detailing each term of probation and setting forth specific dates by which certain conditions must be fulfilled. The letter specifically provided that respondent must complete and pass a course in professional ethics that had been pre-approved by the Board and that respondent must pay the Board \$10,423.95 in investigation and prosecution costs by no later than 90 days prior to the end of the period of probation, and that said payments may be made in installments. The letter also specifies, in bold type, that respondent's failure to timely complete an approved professional ethics course or failure to timely pay his full cost obligation to the Board would constitute a violation of his probation.

7. By May 3, 2019, email message, respondent provided Ms. Smith with proof that, on April 26, 2019, he completed a one-hour professional development training course titled "Ethics for Professional Engineers." By letter dated May 7, 2019, Ms. Smith informed respondent that the ethics course he completed did not meet the

requirements of Condition 5. She noted that the Board had approved a basic study level 30-hour professional development course regarding engineering ethics offered through the Murdough Center for Engineering Professionalism at Texas Tech University. She explained that respondent may choose to complete a different course, but the course must be similar in content to the Murdough Center course and must be approved by the Board in advance.

8. Despite Ms. Smith's May 7, 2019 letter, respondent failed to complete the educational requirement specified in Condition 5. Respondent also failed to make any payments toward his cost recovery obligation, as required by Condition 7.

### **Respondent's Testimony**

9. Respondent testified that he completed a one-hour professional development ethics course that had not been pre-approved by the Board. After he completed the course, he was informed that it had not been pre-approved and did not satisfy the requirements of Condition 5. He then enrolled in a Board-approved ethics course, however, his wife became seriously ill due to lung disease and he has not been able to complete the course. According to respondent, the Board-approved course "took a tremendous amount of time" and required him to work collaboratively with others. He did not have sufficient time to dedicate to the course due to his wife's illness. Respondent admitted he has made no payments toward his \$10,423.95 cost obligation. He testified that he made no payments toward his cost obligation because he was unaware he was required to pay the Board costs.

10. Respondent wants another opportunity to comply with the terms of his probation. He believes he can bring himself into compliance with the terms of his probation within six to nine months. He continues to care for his ill wife.

## **Analysis**

11. Respondent has had more than three and a half years to pay the Board's costs and to complete one 30-hour ethics course. He has not made a single payment toward his cost obligation and did not timely complete an approved ethics course.

12. Although respondent claimed he was not aware of his obligation to pay costs to the Board, his explanation was not persuasive given that this obligation was specified in writing in both the Decision and the June 18, 2018 letter from Ms. Smith detailing respondent's probationary obligations and deadlines. Although respondent failed to provide a credible basis for his failure to pay his cost obligation, his explanation for failing to complete an approved ethics course due to his wife's illness was convincing. Unfortunately, his wife's illness is ongoing and respondent provided little assurance that, if additional time were granted, he would satisfy the outstanding payment and educational conditions of his probation.

13. The Board had and has legitimate concerns about respondent's fitness to practice, given his prior unprofessional conduct and ongoing failure to comply with the terms of his probation. The reasonable time for respondent to meet his probationary requirements has come and gone and it appears imposing another period of probation would be futile based on the evidence presented at hearing. Respondent has proven he is either unwilling or unable to follow reasonable terms and conditions to complete his probation.

## **LEGAL CONCLUSIONS**

1. The burden of proof in this matter is on complainant to show by a preponderance of evidence that respondent's license should be revoked. (*Sandarg v.*

Dental Board of California (2010) 184 Cal.App.4th 1434, 1441.) A preponderance of the evidence means "more likely than not." (Sandoval v. Bank of Am. (2002) 94 Cal.App.4th 1378, 1388.)

2. Pursuant to Condition 8 of the Decision in Case No. 1163-A, the Board may vacate the stay and reinstate the disciplinary order which was stayed if, after notice and an opportunity to be heard, it is determined that respondent has violated any of the conditions of probation set forth in the Decision.

3. As provided in Findings 3 through 8, respondent violated Conditions 5 and 7 of his probation, as set forth in the Decision in Case No. 1163-A. Accordingly, cause exists to vacate the stay of revocation of respondent's license.

4. The matters set forth in Findings, as a whole, have been considered. The evidence established respondent is unwilling or unable to comply with the terms and conditions of his probation. Under all of the facts and circumstances herein, it would be contrary to the public interest to permit respondent to retain his license at this time.

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## ORDER

The Petition to Revoke Probation is granted, the order staying the revocation of Civil Engineer License No. C 25451 issued to respondent is vacated, and Civil Engineer License No. C 25451 is revoked.

DATE: March 2, 2022

*Original Signed*

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings

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10 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS,**  
**LAND SURVEYORS, AND GEOLOGISTS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
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13 In the Matter of the Petition to Revoke  
Probation Against:

Case No. 1163-A

14 **PAUL ALLEN GILLESPIE**  
15 **4339 Buckeye Creek Road**  
**Mariposa, CA 95338**  
16 **Civil Engineer License No. C 25451**

**PETITION TO REVOKE PROBATION**

17 Respondent.  
18  
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20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about June 11, 1975, the Board for Professional Engineers, Land Surveyors,  
26 and Geologists issued Civil Engineer License Number C 25451 to Paul Allen Gillespie  
27 (Respondent). The Civil Engineer License was in effect at all times relevant to the charges  
28 brought herein and will expire on December 31, 2021, unless renewed.

3. In a disciplinary action titled "In the Matter of Accusation Against Paul Allen Gillespie," Case No. 1163-A, the Board for Professional Engineers, Land Surveyors, and Geologists, issued a decision, effective June 8, 2018, in which Respondent's Civil Engineer License was revoked. However, the revocation was stayed and Respondent's Civil Engineer License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

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

5. Condition 8 of Respondent's probation states:

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, and the period of probation shall be extended until all matters are final.

6. Grounds exist to revoke Respondent's probation and re-impose the order of Revocation of his Civil Engineer License in that he violated the terms and conditions of his probation, as follows:.

### **FIRST CAUSE TO REVOKE PROBATION**

(Failure to Complete and Pass an Approved Course in Professional Ethics)

7. At all times after the effective date of Respondent's probation, Condition 5 stated:

“No later than 60 days prior to the end of the period of probation, respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board its designee.”

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above, in that Respondent failed to complete and pass a course in professional ethics, no later than 60 days before June 8, 2021, as approved in advance by the Board or its designee.

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# **Exhibit A**

## **Decision and Order**

**Board for Professional Engineers, Land Surveyors, and Geologists Case No. 1163-A**

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 Accusation Against:

PAUL ALLEN GILLESPIE

Civil Engineer License No. C 25451

Respondent.

Case No. 1163-A

OAH No. 2017110380

**PROPOSED DECISION**

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 1, 2018, in Sacramento, California.

Kevin Bell, Deputy Attorney General, represented complainant Richard B. Moore, PLS, Executive Officer of the Board of Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, State of California.

Respondent Paul Allen Gillespie was present at the hearing and represented himself.

Evidence was received, the record was closed, and the matter was submitted on February 1, 2018.

**FACTUAL FINDINGS**

1. On June 11, 1975, the Board issued respondent Civil Engineer License Number C 25451 (License). Respondent's License will expire on December 31, 2017, unless renewed or revoked.<sup>1</sup>

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<sup>1</sup> No evidence was presented at hearing as to whether respondent renewed his license. Pursuant to Business and Professions Code section 118, subdivision (b), the expiration of a license does not deprive a board of jurisdiction to proceed with disciplinary action upon any



2. On September 1, 2017, complainant filed the Accusation in his official capacity. Complainant seeks to discipline respondent's license and licensing rights based on his alleged unprofessional and negligent conduct related to licensed activities on seven properties in Tuolumne County, California.<sup>2</sup>

3. Respondent timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

#### *Complaint Filed by Tuolumne County*

4. On or about January 21, 2016, the Enforcement Unit of the Board received a complaint from Doug Oliver, Chief Building Official with the Tuolumne County Building and Safety Division (County). Mr. Oliver testified at hearing that he has worked for the County for approximately 10 years. His duties as the Chief Building Official include code enforcement and supervising the building inspectors, plan reviewers, and permit technicians employed by the County. Neither Mr. Oliver nor his staff members are licensed engineers. Mr. Oliver has interacted with respondent over the last 10 years related to his work on projects in Tuolumne County.

5. Mr. Oliver filed a written complaint with the Board concerning engineering work performed by respondent on several projects in Tuolumne County. Mr. Oliver explained that the County received complaints from respondent's customers concerning work respondent performed. Additionally, respondent repeatedly stated that he was not willing to provide information the County requested concerning some of his projects. Mr. Oliver concluded that to come to a resolution with respondent, the Board should investigate the complaints.

6. The County provided the Board with information concerning engineering work respondent performed on several projects in which the County determined there were alleged violations of the engineering standards of practice. These projects included the following:

#### **OAK HILL ORTHODOX PROJECT**

7. The Oak Hill Orthodox Project (Oak Hill) was a project for an entry canopy at the Oak Hill church, a non-residential structure, located in Sonora, California. On March 6,

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ground provided by law during any period in which the license may be renewed, restored, reissued, or reinstated.

<sup>2</sup> At hearing, complainant amended the Accusation on page 8, line 17, to read: "paragraphs 13 through 24"; line 23 to read: "paragraph 25," and page 9, line 2 to read: "paragraphs 13, 14b., 15c., 16d., 17d, 22d, and 24c."



2013, the County received site plan drawings and structural calculations for the entry canopy that respondent prepared. The plans were stamped and signed by respondent, but not dated. Mr. Oliver explained one of the factors for the project was the "risk category" for the building, which establishes a specific safety factor that is built into the structural design. Respondent was required to provide information such as the "importance factor" for wind and the seismic design for the structure. Respondent indicated on the drawing that the importance factor for wind was 0.85. He did not provide information on the seismic design.

8. On March 29, 2013, the County issued a "Plan Review Correction Letter" (Correction Letter) explaining that several corrections were required to be made to the plans respondent submitted, before a Building Permit could be issued. Respondent was required to provide information concerning the "Occupancy Category of the existing church" and to "revise the lateral analysis for the proposed structure to include the seismic design."

9. By letter dated October 16, 2013, respondent submitted revised structural calculations to the County. Respondent stated the building was an "Occupancy Category II." He provided seismic design and wind calculations for the project. Respondent indicated that the "wind factor" was 0.85, with a "Seismic Importance Factor" of 1.0. He did not date the engineering documents below or next to his signature and seal. The County determined that the category respondent identified on the calculations was contrary to what the Building Code required for the structure. The importance factor of 1.0 should have been used for wind design.

#### K.B.B. RESIDENCE PROJECT

10. On or about January 7, 2015, respondent submitted drawings and structural calculations to the County for a construction of a dormer/deck cover on an existing residential structure located in Twain Harte, California. The plans were stamped and signed by respondent, but not dated.

11. On January 26, 2015, the County issued a Correction Letter. The letter requested in part, that respondent provide engineering calculations for additional footings, framing, and snow load, provide a "vertical analysis for the existing ridge beam showing that the existing ridge beam can take the additional tributary load from the new ridge beam," and a lateral analysis for the addition. The letter also explained that the "first and second floor plans were inconsistent with one another." Specifically, the "first floor plans shows 26 feet for the exterior width of the building," while the second floor plan showed "26 feet for the exterior width including the addition." The "working documents" submitted by respondent also showed that the "added roof" would be "coming down to and connecting to the second story floor elevation," which the County found was "inconsistent with the second story floor plans, which indicate that there should be exterior walls being built on the second story."

Additionally, respondent failed to show "details of the additions gable and wall and how the new ridge beam will be supported on that end." Respondent was asked to include "all subsequent bracket connections if any." He was also asked to "show the types of



brackets” that would be “utilized for the connections for the roof assembly” including “brackets for the existing rafters to valley beam, brackets for new rafters to valley beams and new rafter to new ridge beam.”

12. On or about August 14, 2015, respondent submitted a second set of structural calculations to the County for the K.B.B. project. The plans were stamped and signed by respondent, but not dated. On August 24, 2015, the County issued a Correction Letter. Respondent failed to address the items in the January 26, 2015 Correction Letter related to the inconsistencies for the first and second floor plans, and information regarding the “additions gable end wall and how the new ridge beam” would be supported, including information about bracket connections and the type of brackets that would be utilized.

Respondent was also asked to provide a “vertical analysis for the existing ridge beam showing that the existing ridge beam can take the added tributary load from the new ridge beam.” The County noted that the August 14, 2015 submissions included the “inclusion of the new 10x22 steel beam.” Respondent was asked to provide a “complete layout for this beam on the revised working drawings and reference the provided detail at the appropriate location.” Respondent’s drawings did not reflect the new beam and the “working drawings did not clarify any locations other than the proposed footings.” Respondent was again asked to provide a lateral analysis for the addition.

13. On October 12, 2015, respondent submitted a third set of structural calculations and drawings. On October 13, 2015, the County issued a Correction Letter, which noted that respondent had failed to address the inconsistency with the second story floor plans, which indicate that there should be exterior walls being built on the second story. Respondent also failed to address the request to provide information on how the gable end wall and how the new ridge beam would be supported, including information about the type of brackets that would be utilized. Additionally, he did not provide the requested information concerning the steel beam, and did not provide a lateral analysis to address the revised design to “support the ridge beam.” He also did not provide a date adjacent to his stamp on the drawings and/or calculations.

#### J.L.B. RESIDENCE PROJECT

14. The J.L.B. Residence Project was a new residential structure, located in Jamestown, California. Prior to July 2015, the project went through two plan checks with the County with L.R. Davey as the engineer of record. Mr. Oliver explained that the County requested additional information and modifications to the project because there were a number of lengths and widths of shear walls that did not match the plans.

15. By letter dated June 10, 2015, the County requested that the structural analysis comply with the “Special Design Provisions for Wind and Seismic” concerning the “two to one height to width ratio.” Clarification was also requested concerning shear wall lines analysis that called for seven and nine foot “boundary height,” while the working documents called for eight and ten foot plate heights. The County requested that the issue with the



“Moment Frame portion of the building” be addressed and that a proposed retaining wall be increased from six to ten feet, with an analysis and design for the ten foot retaining wall.

16. On July 17, and 30, 2015, respondent, as the engineer of record, submitted structural calculations for the project. The structural calculations did not address the issues identified by the County in the June 10, 2015 Correction Letter, related to the Special Design Provisions for Wind and Seismic related to the height to width ratio. Nor did the documents address the height discrepancies in the sheer wall design. He also did not provide a date adjacent to his stamp on the calculations.

#### P.H. RESIDENCE PROJECT

17. The P.H. Residence Project was an addition to an existing residential structure located in Groveland, California. On or about September 9, 2015, respondent submitted structural calculations to the County. Mr. Oliver testified that there were “numerous structural components” that respondent failed to identify in the calculations he submitted. He also did not provide a date adjacent to his stamp on the drawings and/or calculations.

18. On October 2, 2015, the County issued a Correction Letter requesting that respondent, as the engineer of record, provide additional information concerning the project, including “complete dimensions for pier spacing of required floor framing supports” and “all hold downs and locations per the provided shear wall plans and analysis.” The letter also stated that “various headers identified on the roof framing plan [were] not consistent with the specified ‘metal pipe’ details shown on the structural plans.” Respondent was required to “coordinate all structural elements with the revised structural analysis as appropriate.”

The letter also stated that the “current roof framing plan does not address various areas of the required roof framing not included in the truss design.” Respondent was requested to provide “complete framing information and appropriate details with references for all areas of the roof framing not addressed.” Respondent also failed to “clearly identify the required roof framing at the proposed covered entry,” as required. He was also directed to provide “a statement of acceptance for the proposed truss calculations” that conformed to the design.

Respondent was informed that the “lateral analysis” was not “consistent with the developed loading.” The County provided a list of “amendments” that were needed to justify the design for the project. For the “Seismic Loading Analysis” respondent identified on the structural calculations, the “base seismic loading” exceeded “various areas of wind loading.” Respondent was required to “coordinate and revise the provided lateral analysis and respective design elements” to conform to the applicable “governing force” requirements.

Respondent’s drawings also provided for a five foot metal pipe to be used to “resist lateral forces.” However, he failed to provide an “appropriate analysis of any portion of the materials, connections, footings or indication of a design standard” consistent with the



method of use he identified. Respondent was asked to clarify the design standard and provide a “complete analysis for all portions of the proposed system.”

19. By letter dated November 16, 2015, and additional submission of drawings and calculations, respondent addressed some of the comments and requests in the October 2, 2015 Correction Letter. Respondent wrote that “all areas of the roof framing had been shown” on the documents he previously submitted. Respondent also wrote that a complete analysis for the footing and column supporting the reaction from truss, was also shown on the document he previously submitted. Concerning the request for recalculation of wind and seismic analysis, respondent wrote that “recalculation of wind and seismic will not be done, seismic does not offer a significant change in loading.” He also noted that “pipe was already calculated,” but he added an additional sheet of calculations. Respondent did not provide a date adjacent to his stamp on the drawings and/or calculations.

20. On December 4, 2015, the County issued a Correction letter related to the additional information respondent submitted in November 2015. The letter noted that respondent had addressed some, but not all of the items in the October 2, 2015 Correction Letter. Respondent was requested to “identify all hold downs and locations per the provided shear wall plans and analysis.” Respondent was also informed that “various headers identified on the roof framing plan [were] not consistent with the specified ‘metal pipe’ detail shown” on the submissions. Respondent was also directed to “coordinate all structural elements with the revised structural analysis as appropriate.”

The letter also explained that the “roof framing plan” did not address the concerns previously raised by the County. He was directed to provide complete framing information. He was also directed to “provide a statement of acceptance of the proposed truss calculations” and a “complete analysis for the footing and column supporting the reaction from the truss.” Respondent was informed that the “lateral analysis [was] not consistent with the development loading.” Amendments were needed to justify the design, including changes to seismic and wind loading, height to width ratio restrictions for wood shear walls, and an appropriate analysis for the five foot metal pipe used to resist lateral forces.

#### L.M.S. RESIDENCE PROJECT

21. The L.M.S. Residence Project was an addition of a deck and endwall frame to an existing residential structure, located in Twain Harte, California. On September 18, 2015, respondent submitted structural calculations for the project to the County. Mr. Oliver testified that there were structural components in the design respondent submitted did not “match up” with the plans. There was also an endwall stabilization design that was not “justified” in the analysis.

22. On October 2, 2015, the County issued a Correction Letter, requesting that corrections and additional information be provided to the County. Requested corrections included a “vertical analysis” for a “6x12 P.T. Front Beam” and to “justify the proposed design for fastening the 6x12 beam to the 6x6 posts.” Respondent was requested to “call out



all proposed through bolts on the plans.” Respondent was also requested to “clarify the location of the Endwall Stabilization design as shown in the structural calculations.” The County noted that the project’s location was not included in the plans respondent submitted.

23. By letter dated November 16, 2015, respondent provided the County additional information in response to the October 2, 2015 Correction Letter. He indicated the information concerning the vertical analysis and information for the proposed fastening of the 6x12 beam to the 6x6 posts was shown on the plans. He also noted that the information requested for the Endwall Stabilization Design was added to the “deck plans.” On November 24, 2015, respondent submitted revised structural calculations and drawings for the project. He did not provide a date adjacent to his stamp on the drawings and/or calculations.

24. The County issued a Correction Letter on December 15, 2015. Respondent was again requested to provide a “vertical analysis” for a “6x12 P.T. Front Beam” and to “justify the proposed design for fastening the 6x12 beam to the 6x6 posts.” Respondent was again requested to “call out all proposed through bolts on the plans.” Respondent was also asked to “justify and clarify how all reactions from the Endwall Stabilization design affect the lower walls.” Additionally, he was asked to “justify all shear transfer from the Endwall Stabilization design to the lower walls by analysis.” The County determined that “the lower level wall has no justification to support the reactions from the Endwall Stabilization design above it.”

25. By email dated December 9, 2015, respondent informed the County that there would be “no further calculations” for the project. He further stated that “[i]t is satisfactory as is.” He directed the County to contact the Board or to report him to the Tuolumne County Board of Supervisors as being “incompetent to provide engineering in [their] ultimate wisdom.”

#### LELAND HIGH SIERRA SNOW PLAY PROJECT

26. On November 10, 2015, respondent submitted structural calculations to the County for the Leland High Sierra Snow Play Project (Leland Project), located in Cold Springs, California. The Leland Project was related to a winter playground area that includes hills with toe ropes, ski lifts, and a restaurant. Mr. Oliver testified that the County had several concerns with the structural calculations and analysis respondent submitted.

27. On December 1, 2015, the County issued a Correction Letter, requesting additional information and corrections to the structural calculations. The County noted that there was “no footing analysis” for the project, which was requested. Respondent was a requested to provide an “analysis for the 10’ wet well to be installed for the pump” and to “provide a design that reflects the analysis for review.” Respondent was also requested to provide an “analysis for the indicated 4x14 ridge beam.” Respondent was asked to provide an “analysis for the attachment of the 3 1/2” slab supporting the 8,000lb Pre-Fab Skid” as

had been indicated on the mechanical plans. Respondent was also asked to “clarify/justify how the ridge beam for the roof is being supported.”

28. By letter dated December 3, 2015, respondent replied to the Correction Letter, and thereafter submitted revised Structural Calculations. Respondent indicated that the “footings shown on the plans is sufficient. The wet well is a precast unit with structural specifications shown on their sheets.” He also noted that “actually the slab was a 4 inch pour but the analysis is for a 3.5 inch slab.” Respondent stated that the plans did not include a “ridge beam.” Rather he contended it was a “ridge board.” In the additional calculations respondent indicated he used a computer analysis for the footing that supported the 10 foot wet well. However, the analysis was not provided to the County. Respondent also did not provide a date adjacent to his stamp on the calculations.

#### C.B. RESIDENCE PROJECT

29. The C.B. Residence Project, was an addition to an existing non-residential structure located in Groveland, California. On or about July 27, 2015, JP Jones Engineering Design (JP Jones), the engineer of record for the project, submitted structural calculations and drawings to the County for the Project. The contractor listed was Hessler Construction. On or about November 23, 2015, respondent took over the project and submitted structural calculations and drawings to the County that had originally been submitted by JP Jones, but contained some revisions. Respondent did not provide a date adjacent to his stamp on the calculations and drawings.

30. On December 3, 2015, the County issued a Correction Letter, requesting revisions to the plans and additional information. Respondent was asked to provide documentation of “elevations for the covered porch addition.” He was also asked to provide a “complete lateral analysis for the project justifying all connections in relation to the lateral components for the project” and footing analysis. Respondent did not provide the requested information.

#### *Enforcement Unit Investigation*

31. On or about February 5, 2016, Angela Smith, an analyst in the Enforcement Unit of the Board was assigned to investigate the complaint filed by the County. Ms. Smith prepared a report signed on May 9, 2017, and testified at hearing. As part of the investigation, Ms. Smith reviewed documents from the County concerning the specific projects the County included in the complaint, obtained documents from respondent, allowed him to respond to the County’s allegations, and forwarded the information to Kimberly Scott-Hallet, an expert reviewer retained by the Board.

#### *Expert Opinion*

32. Ms. Scott-Hallet is a licensed structural engineer. She teaches engineering courses at California State University, Sacramento (CSUS), and performs consulting work



for a forensic engineering firm. Ms. Scott-Hallet obtained her Bachelor's Degree from CSUS in 1997 and her Master's Degree in Civil Engineering in 1998.

33. In late 2016, the Board contacted Ms. Scott-Hallet to conduct an expert review of the work respondent performed on various projects in Tuolumne County. Ms. Scott-Hallet testified at hearing and prepared detailed reports concerning seven projects she reviewed. In her reports, she listed the documents she reviewed in forming her opinion that respondent violated the standard of practice for engineers in each of the projects listed below.

#### OAK HILL ORTHODOX PROJECT

34. Ms. Scott-Hallet opined that the "standard of practice for an engineer is to provide analysis for structural elements that are part of the system." If the analysis is not provided in the original calculations provided to the building department, the standard of practice requires an engineer to provide the calculations in response to plan check comments or requests for information.

35. Ms. Scott-Hallet reviewed the calculations respondent submitted to the County for the Oak Hill Project. The calculations he submitted on March 6, 2013, only addressed the importance factor for wind of .85. On October 16, 2013, respondent submitted additional information to the County indicating that the building was an Occupancy Category II building. However, the American Society of Civil Engineers (ASCE) 7-10, table 11.5-1 provides that an importance factor of 1.0 should be used for wind design for an Occupancy Category II Building. Ms. Scott-Hallet opined that respondent did not meet the standard of practice for engineering for the analysis he provided to the County, because his "lateral analysis provided in his calculations was incorrect for wind utilizing the incorrect importance factor resulting in incorrect and lower wind loads than the minimum required by the code."

36. Ms. Scott-Hallet also stated that pursuant to Professional Engineer's Act section 6735, subdivision (a), "all final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee and the date of the signing and sealing or stamping." Ms. Scott-Hallet opined that respondent violated the Professional Engineer's Act because he did not provide a date adjacent to his stamp on the drawings and/or calculations.

#### K.B.B. RESIDENCE PROJECT

37. Ms. Scott-Hallet opined that the respondent did not meet standard of practice related to the analysis he provided for the K.B.B. Project dormer/deck cover project. The standard of practice required respondent to provide an analysis for structural elements that are part of the system, and if the analysis was not provided in the original set of calculations provided to the County, to provide the information upon request. She opined that respondent failed to address the "connections" between the new steel beams and wood posts, or connections between the "wood posts supporting the steel beam and the concrete footings." Additionally, the "detail for the lateral transfer of forces was not drawn to scale and did not

provide adequate resistance for lateral loads.” Several connections were also not specified in the calculations or drawings.

38. Ms. Scott-Hallet also opined that respondent violated the Professional Engineer’s Act because he did not provide a date adjacent to his stamp on the drawings and/or calculations.

#### J.L.B. RESIDENCE PROJECT

39. Ms. Scott-Hallet opined that respondent did not meet the standard of practice for engineering for the analysis he provided to the County for the J.L.B. Project. Respondent was required to provide an analysis for structural elements that are part of the system, and if the analysis was not provided in the original set of calculations provided to the County, to provide the information upon request. The lateral analysis respondent provided for the “shear walls did not meet code requirements and standards for reduction in capacity of walls for height to width ratios and force transfer calculations were not provided above the openings.”

40. Additionally, respondent’s “lateral analysis” set forth in his calculations was “incomplete for the shear walls including analysis for force transfer around openings and reduced capacity for height to width ratios resulting in the analysis not meeting the minimum requirements required by [the Building] Code.” Ms. Scott-Hallet also opined that respondent violated the Professional Engineer’s Act because he did not provide a date adjacent to his stamp on the drawings and/or calculations.

#### P.H. RESIDENCE PROJECT

41. Ms. Scott-Hallet opined that respondent did not meet the standard of practice for engineering for the analysis he provided to the County for the P.H. Project. The standard of practice required respondent to provide an analysis for structural elements that are part of the system, and if the analysis was not provided in the original set of calculations provided to the County, to provide the information upon request. Respondent failed to respond to all the Correction Letter comments from the County. Additionally, “there was not a complete rational justification” for the proposed design. The “lateral analysis in his calculations was incomplete and portions were incorrect. The lateral analysis interchanged stress and strength level loads.” She further opined that “it appeared as seismic loads were larger than wind loads” in some areas. However, “seismic loads were not designed for.”

42. Ms. Scott-Hallet also opined that respondent violated the Professional Engineer’s Act because he did not provide a date adjacent to his stamp on the drawings and/or calculations.

///



#### L.M.S. RESIDENCE PROJECT

43. Ms. Scott-Hallet opined that respondent did not meet the standard of practice for engineering for the analysis he provided to the County for the L.M.S. Project. The standard of practice required respondent to provide an analysis for structural elements that are part of the system, and if the analysis was not provided in the original set of calculations provided to the County, to provide the information upon request. Respondent failed to respond to Correction Letter comments and "there was not a complete rational justification" provided by respondent for the design on the plans he prepared.

44. Ms. Scott-Hallet opined that the second set of drawings respondent submitted to the County on November 24, 2015, included calculations for the wrong size bolt that was proposed. Additionally, the analysis for the Endwall Stabilization was incomplete because the wall studs identified by respondent were "not verified for the loads from the end wall." Additionally, respondent failed to provide an "analysis to verify the four screws at the plate for both shear as well as shear in both the vertical and horizontal directions acting simultaneously." She opined that the analysis respondent prepared was incomplete.

45. Ms. Scott-Hallet also opined that respondent violated the Professional Engineer's Act because he did not provide a date adjacent to his stamp on the drawings and/or calculations.

#### LELAND HIGH SIERRA SNOW PLAY PROJECT

46. Ms. Scott-Hallet opined that respondent did not meet the standard of practice for engineering for the analysis he provided to the County for the Leland Project. Respondent failed to provide "complete supporting documentation for his analysis and calculations including both input and output computer analysis (RISA) and by not specifying minimum requirements and/or specifications for loads on the detail of the precast manhole on the drawings."

47. Additionally, on December 3, 2015, respondent included additional calculations for precast manhole components, however "a comparison was never made between the actual loads on the site and the specifications" listed by respondent. Respondent also indicated that the precast manhole was "good to a depth of 530 feet." However, the drawings prepared by the manufacture and reviewed by respondent indicated that the manhole was "good to a depth of 35 feet."

48. Also, respondent's additional calculations for the "ridge beam/ridge board" did not include "input loads for snow, dead, and live loads." As a result, it could not be determined if the analysis was correct or complete. The screws respondent identified on the calculations for the "connections between the beam rafters and the exterior wall" did not match the drawings.

49. Ms. Scott-Hallet also opined that respondent violated the Professional Engineer's Act because he did not provide a date adjacent to his stamp on all the drawings and/or calculations.

#### C.B. RESIDENCE PROJECT

50. Ms. Scott-Hallet opined that respondent did not meet the standard of practice for engineering for the analysis he provided to the County for the C.B. Residence Project. The standard of practice required respondent to provide an analysis for structural elements that are part of the system, and if the analysis was not provided in the original set of calculations provided to the County, to provide the information upon request. If "revisions are made to a project that was originally designed by another engineer, the standard of practice would be to get permission from the other engineer to utilize his design documents (calculations and drawings) or to create a new set of documents indicating the other engineer's work as existing or designed by others.

51. Ms. Scott-Hallet opined that respondent submitted structural calculations and drawings on November 23, 2015, to the County that did not include "analysis for the foundation and/or the lateral analysis." Respondent failed to provide that information after he was requested to do so by the County on December 3, 2015. Additionally, respondent submitted drawings that were a part of the original submitted stamped and signed by JP Jones, without any evidence that respondent had obtained permission to use the drawings. Additionally, respondent failed to submit any documentation demonstrating that he had a prior contractual relationship with Hessler Construction.

52. Ms. Scott-Hallet also opined that respondent violated the Professional Engineer's Act because he did not provide a date adjacent to his stamp on all the drawings and/or calculations.

#### *Factors in Aggravation, Mitigation, and Rehabilitation*

53. On November 26, 2014, the Board issued Citation Order 10394-L to respondent for violation Business and Professions Code sections 6749, subdivision (a)(5) and 6775, subdivision (c), related to a property located in Twain Harte, California. Respondent was found to have been negligent in his practice of civil engineering. He designed a replacement footing for the residence with a "depth that did not adequately penetrate into original ground." He also failed to "perform any site specific intrusive soils investigation, which was necessary to determine the appropriate depth and configuration of the footings." Respondent paid a \$1,750 administrative fine. Respondent has no other history of prior discipline.

54. Respondent has been a licensed civil engineer for approximately 43 years. He has designed hundreds of buildings in California and 23 other states where he is registered as an engineer. Respondent testified that he has only been accused of misconduct for the work he has performed in Tuolumne County. Respondent explained that he uses a "common sense



approach to engineering.” Respondent also explained that he has a “problem” with the Building Department Codes, which he believes are “a little over the top” in some respects. He admitted that “sometimes” his “actual structural calculations” do not meet the code requirements. However, he explained that not meeting the code “is one thing.” Not having a structure fail “is a totally different thing.” Respondent has never had a project that he designed structurally fail.

55. Concerning the Oak Hill Project, respondent admitted that he was in error for not having the correct building classification which increased the seismic load by “about” 10 percent. Respondent explained that in his opinion, there would not have been “any difference whatsoever.”

56. Respondent also explained that he was hired by the contractor for the Leland Project. Respondent performed a “quick analysis of the building” and recommended the use of a ridge board, so that there would not be “loads” from the rafters bearing directly on the beam. Respondent contended that he tried to explain his recommendation concerning the use of the ridge board to Mr. Oliver and another plan checker at the County. However they disagreed with his approach. Ultimately, the County directed respondent to make changes to the plans, which he made, and a permit was issued.

Respondent also disagreed with the County’s requirement that he provide that the standard manhole was going down 10 feet in the ground and could hold water that was being pumped from the lake to the snow-making equipment. Respondent had failed to use the manufacturer’s specifications, and as a result the County did not agree with his calculations.

Respondent also admitted that for allegations related to J.L.B. Residence Project, he did not follow the Building Code requirements for the shear walls “for the simple reason it would not make any difference.” Respondent admitted that he was wrong for not following the code.

57. Respondent also explained that he typically writes contracts for work with clients he has never worked with before. If he has worked with a contractor or client in the past, he does not typically prepare a contract.

58. Respondent admitted that he has acted in an unprofessional manner with the County. Respondent explained that he became “irritated” with the County, and at times made statements that were inappropriate. Respondent explained that he has apologized to Mr. Oliver for his conduct.

59. Respondent also explained that he is not a “rich engineer.” His wife has an incurable lung disease which required him to cut his practice to approximately 10 percent of his normal practice. As a result, his ability to pay costs incurred by the Board for the investigation is limited.

## *Discussion*

60. The Board established by clear and convincing evidence that respondent violated the standard of practice and Professional Engineer's Act related to the seven projects set forth above. Respondent's conduct was negligent in that he repeatedly failed to use the care ordinarily exercised in like cases by duly licensed professional engineers in good standing. Ms. Scott-Hallet persuasively established the standard of practice that is required for a licensed engineer, includes providing analysis for structural elements that are part of the system and to respond to plan check comments or requests for information. Respondent failed to provide requested information from the County on numerous occasions. Additionally, some of the information he provided was incomplete and inaccurate. He also repeatedly failed to provide a date adjacent to his stamp on all the drawings and/or calculations. On one occasion, he failed to provide proof of a contract to perform work in which he was acting as the engineer of record.

61. The Board has adopted criteria for determining a licensee's rehabilitation since committing the acts for which discipline is sought and his present ability to retain his license. (Cal. Code Regs., tit. 16, § 418, subd. (b).) The criteria that are relevant here include: 1) the nature and severity of the acts for which discipline is sought; 2) evidence of the commission of other acts, either before or after the underlying conduct, which would constitute grounds for discipline; 3) the time that has elapsed since the commission of the underlying acts and any other acts which would constitute grounds for discipline; and 4) any evidence of rehabilitation presented by the licensee. (Cal Code Regs., tit. 16, § 418, subds. (b)(1)-(b)(3) and (b)(5).)<sup>3</sup>

62. Respondent has been licensed for 43 years. Other than one citation in 2014, he has no record of discipline. Respondent's testimony demonstrated that he is extremely knowledgeable and experienced. Respondent admitted that "sometimes" his projects did not meet the Building Code, because he disagrees with some of the requirements. He demonstrated that he is aware of his duties to exercise ordinary care as a licensed engineer. Complying with the applicable Building Code is part of the requirement. While it is commendable that respondent has never had a structure fail, if he is continued to be licensed, he must comply with his obligations as a licensee. Considering all of the evidence, probationary terms designed to ensure that respondent complies with his duties as a licensed engineer, will protect the health, safety and welfare of the public.

## *Costs of Investigation and Enforcement*

63. Complainant requested costs of enforcement and prosecution in the total amount of \$10,423.95 pursuant to Business and Professions Code section 125.3. This

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<sup>3</sup> The other criteria specified in the regulation apply only when criminal conduct is the basis for discipline. (Cal Code Regs., tit. 16, § 418, subds. (b)(4) [the extent of any compliance with the terms of probation, parole, or restitution], (b)(6) [total criminal record], and (b)(7) [any proceedings to expunge prior criminal convictions].)



amount consists of charges incurred by the Attorney General's Office and expert fees. A Certification of Prosecution Costs and Declaration of Tiffany Criswell, Enforcement Program Manager for the Board were introduced at the hearing. Costs in the amount of \$10,423.95 are reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 10 below.

## LEGAL CONCLUSIONS

1. The burden of proof in this matter is on complainant, and the standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. A civil engineer license may be disciplined when the Board has found the licensee guilty of negligence in his practice. (Bus. & Prof. Code, § 6775, subd. (c).) A person is guilty of negligence when his conduct falls below the standard established by law for the protection of others against an unreasonable risk of harm. (See, *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997.) The general rule is that one is required to exercise the care that a reasonable prudent person would exercise under similar circumstances. (*Ibid.*) "With respect to professionals, their specialized education and training do not serve to impose an increased duty of care but rather are considered additional 'circumstances' relevant to an overall assessment of what constitutes 'ordinary prudence' in a particular situation." (*Id.*, at pp. 997-998.)

3. The applicable standard of care by which respondent's conduct is to be measured is the duty "to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing." (Cal. Code Regs., tit. 16, § 404, subd. (dd).) And the care a duly licensed professional engineer in good standing would have ordinarily exercised in providing engineering services must be established by expert testimony. (*Flowers v. Torrance Memorial Hospital Medical Center*, *supra*, 8 Cal.4th 992, 1001.) While case law provides that such testimony is conclusive and cannot be disregarded, such case law has been interpreted to mean only that expert testimony cannot be rebutted by, or disregarded in favor of, lay testimony. "The weight to be given to expert testimony is within the sound discretion of the fact finding tribunal." (*Maryland Casualty Company v. Industrial Accident Commission* (1944) 64 Cal.App.2d 162, 166; *Pacific Employers Insurance Co. v. Industrial Accident Commission* (1941) 47 Cal.App.2d 494, 501.)

4. As set forth in Factual Findings 7 through 52, 54, 55, 59 and 61, cause exists to discipline respondent's license, pursuant to Business and Professions Code section 6775, subdivision (c), based on his negligent conduct, as defined by California Code of Regulations, title 16, section 404, subdivision (dd).

5. A civil engineer's license may be disciplined if the licensee violates the Professional Engineers Act, the Professional Land Surveyors' Act, or any rule or regulation adopted pursuant to either of those Acts. (Bus. & Prof. Code, §§ 6775, subd. (h).) Business

and Professions Code section 6749, requires professional engineers to obtain their client's signature on a written contract before providing engineering services.

A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional 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 professional 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 professional engineer, and the name and address of the client.
- (4) A description of the procedure that the professional 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.

(Bus. & Prof. Code, § 6749, subd. (a).)

6. As set forth in Factual Findings 51 and 56, respondent failed to obtain a written contract for the C.B. Residence Project. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 6775, subdivision (h), jointly and severally, as the statute relates to Business and Professions Code section 6749, subdivision (a).

7. Pursuant to Business and Professions Code section 6735, subdivision (a) provides:

All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall



include a notation as to the intended purpose of the document, such as “preliminary,” “not for construction,” “for plan check only,” or “for review only.” All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, 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 signature sheet.

8. California Code of Regulations, title 16, section 411, subdivision (h) provides that a licensee “shall include the date of signing and sealing immediately below or next to the signature and seal.”

9. As Factual Findings 7 through 52, respondent repeatedly failed to provide a date adjacent to his stamp on all the drawings and/or calculations. Therefore, cause exists to discipline respondent’s license pursuant to Business and Professions Code sections 6775, subdivision (h), jointly and severally, as the statute relates to Business and Professions Code section 6735, subdivision (a).

#### *Cost Recovery*

10. Complainant requested costs of enforcement and prosecution in the total amount of \$10,423.95 pursuant to Business and Professions Code section 125.3. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: (1) the licentiate’s success in getting the charges dismissed or reduced; (2) the licentiate’s subjective good faith belief in the merits of his or her position; (3) whether the licentiate raised a colorable challenge to the proposed discipline; (4) the licentiate’s financial ability to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

The investigation and enforcement of this matter was extensive and appropriate in light of the misconduct. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Considering respondent’s financial obligations, pursuant to the terms of his probation, he shall be permitted to pay these costs in a payment plan approved by the Board.

## ORDER

IT IS HEREBY ORDERED that Civil Engineer License Number C25451 issued to respondent Paul Allen Gillespie is REVOKED. However, the revocation is STAYED and respondent is placed on PROBATION for a period of three (3) years on the following conditions:

1. Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.
2. Respondent shall submit such special reports as the Board may require.
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, he shall immediately notify the Board in writing.
4. Within 60 days of the effective date of this Decision, respondent shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.
5. No later than 60 days prior to the end of the period of probation, respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.
6. Within 30 days of the effective date of this Decision, respondent shall provide the Board with evidence that he has provided all persons or entities with whom he has a contractual or employment relationship for the provision of professional engineering and/or professional land surveying services a copy of the Decision and Order of the Board. Such evidence shall include, but not be limited to, the name and business address of each person or entity required to be so notified. During the period of probation, respondent may be required to provide the same notification to each new person or entity with whom he has such contractual or employment relationship and shall report to the Board the name and address of each person or entity so notified.
7. Respondent shall pay the Board's costs associated with its investigation and prosecution pursuant to Business and Professions Code section 125.3 in the amount of \$10,423.95. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than 90 days prior to the end of the period of probation.
8. 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.

9. 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: March 2, 2018

Digitally signed by  
*Original Signed*

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MARCIE LARSON  
Administrative Law Judge  
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 1163-A

12 **PAUL ALLEN GILLESPIE**  
13 **4339 Buckeye Creek Road**  
**Mariposa, CA 95338**  
14 **Civil Engineer License No. C 25451**

**A C C U S A T I O N**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about June 11, 1975, the Board issued Civil Engineer License Number C 25451  
22 to Paul Allen Gillespie (Respondent). The Civil Engineer License was in full force and effect at  
23 all times relevant to the charges brought herein and will expire on December 31, 2017, unless  
24 renewed.

25 3. On or about June 11, 1974, the Board issued Land Surveyor License Number L 4190  
26 to (Respondent). The Land Surveyor License expired on June 30, 1996, and has not been  
27 renewed.<sup>1</sup>

28 <sup>1</sup> This license is not subject to discipline in the current matter and is included for historical purposes only.

## JURISDICTION AND STATUTORY PROVISIONS

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 6775 of the Code states, in pertinent part, that:

“The Board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any professional engineer licensed under this chapter and make findings thereon.

By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer licensed under this chapter on any of the following grounds:

. . . .

“(c) Any negligence or incompetence in his or her practice.

. . . .”

6. Section 6735 of the Code states, in pertinent part, that:

“(a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as “documents”) shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number.

. . . .

All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, 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 signature sheet.”



1       7.     Section 6749 of the Code states, in pertinent part, that:

2       “(a) A professional engineer shall use a written contract when contracting to provide  
3 professional engineering services to a client pursuant to this chapter. The written contract shall be  
4 executed by the professional engineer and the client or the client’s representative prior to the  
5 professional engineer commencing work, unless the client knowingly states in writing that work  
6 may be commenced before the contract is executed.

7       ....”

8       8.     Section 6764 of the Code states, in pertinent part, that:

9       “Each professional engineer licensed under this chapter shall, upon licensure, obtain a seal  
10 or stamp of a design authorized by the board bearing the licensee’s name, number of his or her  
11 certificate or authority, the legend “professional engineer” and the designation of the particular  
12 branch or authority in which he or she is licensed.”

### 13                                   REGULATORY PROVISIONS

14       9.     Section 404(dd) of Title 16, California Code of Regulations provides in pertinent  
15 part:

16       “For the sole purpose of investigating complaints and making findings thereon under  
17 Sections 6775 and 8780 of the Code, ‘negligence’ as used in Sections 6775 and 8780 of the Code  
18 is defined as the failure of a licensee, in the practice of professional engineering or land  
19 surveying, to use the care ordinarily exercised in like cases by duly licensed professional  
20 engineers and land surveyors in good standing.”

21       10.    Section 411 of Title 16, California Code of Regulations states in pertinent part:

22       “(h) Each licensee shall include the date of signing and sealing immediately below or next  
23 to the signature and seal.”

24       11.    Section 419 of Title 16, California Code of Regulations states in pertinent part:

25       “[f]or violations of Business and Professions Code sections 6775 and/or 8780 which result  
26 in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the  
27 Government Code against a professional engineering and/or a professional land surveying

28       //

1 license, the following provisions shall apply to disciplinary orders contained in decisions of the  
2 Board:

3 "(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order  
4 shall be revocation of the license. . . . "

### 5 COST RECOVERY

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

### 10 STATEMENT OF FACTS

#### 11 **Oak Hill Orthodox Project**

12 13. On or about March 6, 2013, Respondent submitted structural calculations to the  
13 Tuolumne County Building and Safety Division (County) for the addition of an entry canopy to  
14 the Oak Hill Orthodox project, an existing non-residential structure. A review of those  
15 calculations by the County revealed a lack of pertinent information, including a failure to include  
16 the appropriate seismic analysis and to properly identify the occupancy category of the structure.  
17 On March 29, 2013, the County sent a Plan Review Correction Letter to Respondent.

18 14. On or about October 16, 2013, in response to the Letter Respondent submitted revised  
19 structural calculations with the following errors and omissions:

20 a. Respondent indicated that the building was Occupancy Category II: as a result, an  
21 incorrect importance factor was used, resulting in lower wind loads than the minimum  
22 required.

23 b. Respondent failed to date the engineering documents immediately below or next to  
24 the signature and seal.

#### 25 **K. B. B. Residence Project**

26 15. Between January 2015 and October 2015, the K. B. B. Residence Project, involving  
27 an addition of a dormer (or deck cover) to an existing residential structure, underwent three  
28 separate design reviews for which Respondent submitted structural calculations to the County.



1 Those design reviews were submitted by Respondent on or about January 7, 2015, August 14,  
2 2015, and October 12, 2015, and included structural calculations that contained the following  
3 errors and omissions:

4 a. Connections between structural elements in all three structural calculations were  
5 not included by Respondent and/or are incorrect.

6 b. Respondent failed to include a lateral analysis for design changes included in the  
7 third set of structural calculations submitted on or about October 12, 2015.

8 c. Respondent failed to date the engineering documents immediately below or next to  
9 the signature and seal.

#### 10 **J. L. B. Residence Project**

11 16. On or about July 17, 2015, and on or about July 30, 2015, Respondent submitted  
12 structural calculations to the County for the J. L. B. Residence project, a new residential structure.  
13 Those structural calculations contained the following errors and omissions:

14 a. Respondent's calculations indicated seven and nine-foot plate heights, despite the  
15 drawings indicating eight and ten foot plate heights, resulting in the sheer wall design  
16 being out of code compliance in multiple locations.

17 b. Standards for reduction in capacity of walls for height to width ratios and force  
18 transfer calculations were not provided.

19 c. The lateral analysis in Respondent's calculations was incomplete, including the  
20 analysis for force transfer around the openings and reduced capacity for height to width  
21 ratios resulting in the failure to meet minimum code requirements.

22 d. Respondent failed to date the engineering documents immediately below or next  
23 to the signature and seal.

#### 24 **P. H. Residence Project**

25 17. On or about September 9, 2015, Respondent submitted structural calculations to the  
26 County for the R. H. Residence project, an addition to an existing residential structure. The  
27 project underwent two plan check reviews, one in October 2015 and the second in December  
28 2015, and it was noted by the County that the analysis was not complete and the structural

1 calculations did not match the plans. Respondent's structural calculations contained the following  
2 errors and omissions:

- 3 a. Respondent's analysis as to various roof framing members was incomplete.
- 4 b. Respondent's analysis as to a footing supporting a truss was incomplete.
- 5 c. Respondent's lateral analysis for the residence was incomplete, and did not  
6 address height to width ratios for shear walls resisting seismic loads.
- 7 d. Respondent failed to date the engineering documents immediately below or next to  
8 the signature and seal.

### 9 **L. M. S. Residence Project**

10 18. On or about September 18, 2015, Respondent submitted structural calculations to the  
11 County for the L. M. S. Residence project, an addition of a deck and endwall frame to an existing  
12 residential structure. A review of those calculations by the County revealed a lack of pertinent  
13 information. On October 2, 2015, the County sent a Plan Review Correction Letter to  
14 Respondent.

15 19. On or about November 24, 2015, in response to the Letter, Respondent provided an  
16 analysis that included the following errors and omissions:

- 17 a. Respondent's analysis justifying the through bolts connecting a 6x12 beam to a 6x6  
18 post reflected the wrong size members being used.
- 19 b. Respondent included his own design for an "Endwall Stabilization." The analysis was  
20 lacking justification on how the "Endwall Stabilizer" was interacting with the 11' wall  
21 below it. No further analysis or justification was provided.

22 20. On or about December 8, 2015, the County sent a second Letter to Respondent  
23 concerning the deficiencies in his structural calculations. Respondent replied to the County via e-  
24 mail on or about December 9, 2015, stating that "There will be no further calculations for this  
25 project. It is satisfactory as is. I have assumed all responsibility for its design and construction. If  
26 you have a problem with this contact the State Board of Professional Engineers. Or report me to  
27 the Tuolumne County Board of Supervisors as being incompetent to provide engineering in your  
28 ultimate wisdom."

### **Leland High Sierra Snow Play Project**

21. On or about November 10, 2015, Respondent submitted structural calculations to the County for the Leland High Sierra Snow Play<sup>2</sup> project, a new non-residential structure. A review of those calculations by the County revealed a lack of pertinent information. On December 1, 2015, the County sent a Plan Review Correction Letter to Respondent.

22. On or about December 3, 2015, in response to the Letter, Respondent provided a second set of structural calculations for this project that contained the following errors and omissions:

a. Respondent indicated that a computer analysis for a footing supporting the 10 foot wall had been performed; however, the actual analysis was not included in either set of structural calculations.

b. The structural calculations included discrepancies for the minimum loading for precast manhole components, and the findings in respondent's calculations did not correspond with actual specifications from the manufacturer.

c. Respondent included in his structural calculations an incomplete roof framing system.

d. Respondent failed to date the engineering documents immediately below or next to the signature and seal.

### **C. B. Residence Project**

23. The plans for the C. B. Residence Project were submitted by engineer J. P. J., for an addition to an existing non-residential structure which included a proposed covered porch. On or about September 9, 2015, a Plan Review Correction Letter was issued by the County requesting detail for a connection at the proposed porch. On November 23, 2015, revisions were submitted by Respondent, taking over as engineer of record.

24. On or about December 3, 2015, in response to Respondent's submittal, a Plan Review Correction Letter was issued by the County requesting lateral and footing analysis. Respondent

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<sup>2</sup> The Leland High Sierra Snow Play is a 12-acre recreational facility located in Strawberry, California



1 failed to submit additional analysis as requested, and his structural calculations contained the  
2 following errors and omissions:

- 3 a. Respondent failed to submit corrected plans in response to the County's request to  
4 do so.
- 5 b. Respondent failed to provide complete and/or accurate calculations of connections  
6 and the end wall stabilization.
- 7 c. Respondent failed to date the engineering documents immediately below or next to  
8 the signature and seal.

9 25. Respondent failed to enter into and use a written contract between himself and the  
10 owner of the C. B. Residence Project or their representative while working as the engineer of  
11 record.

### 12 **FIRST CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct - Negligence in the Practice of Engineering)

14 26. Respondent is subject to disciplinary action under section 6775, subdivision (c), for  
15 negligence, as defined in title 16, California Code of Regulations, section 404(dd), in that  
16 respondent failed to use the care ordinarily exercised in like cases by duly licensed professional  
17 engineers as set forth above in paragraphs 12 through 23 and all relevant subparts and referenced  
18 herein as though set forth in full.

### 19 **SECOND CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct - Failure to use a Written Contract)

21 27. Respondent is subject to disciplinary action under section 6749 (a) of the Code, in  
22 that Respondent failed to use a written contract when contracting to provide professional  
23 engineering services to a client as set forth in paragraph 24 and referenced herein as though set  
24 forth in full.

### 25 **THIRD CAUSE FOR DISCIPLINE**

26 (Unprofessional Conduct - Failure to Include Date of Signing and Sealing)

27 28. Respondent is subject to disciplinary action under section 6735 of the Code and  
28 Section 411 of Title 16, California Code of Regulations, in that Respondent failed to date the

1 engineering documents immediately below or next to the signature and seal as set forth in  
2 paragraphs 13b., 14c., 15d., 16d., 21d., and 23c. and referenced herein as though set forth in full.

3 **DISCIPLINE CONSIDERATIONS**

4 29. To determine the degree of discipline, if any, to be imposed on Respondent,  
5 Complainant alleges that on or about November 26, 2014, in a prior action, the Board for  
6 Professional Engineers, Land Surveyors, and Geologists issued Citation Number 10394-L, which  
7 included an order of abatement requiring Respondent to comply with the law and ensure that he  
8 would not violate Code Sections 6749(a)(5) and 6775(c) in the future, and ordered Respondent to  
9 pay an administrative fine in the amount of \$1,750.00, which has been paid in full. That Citation  
10 is now final and is incorporated by reference as if fully set forth.

11 **PRAYER**

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

15 1. Revoking or suspending Civil Engineer License Number C25451, issued to Paul  
16 Allen Gillespie

17 2. Ordering Paul Allen Gillespie to pay the Board for Professional Engineers, Land  
18 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,  
19 pursuant to Business and Professions Code section 125.3; and,

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

21 *Original Signed*

22 DATED: 9/1/17

23 RICHARD B. MOORE, PLS  
24 Executive Officer  
25 Board for Professional Engineers, Land Surveyors, and  
26 Geologists  
27 Department of Consumer Affairs  
28 State of California  
\*Complainant

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