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

In the Matter of the Accusation Against:

JAMSHID JAMES KAVIANI
P.O. BOX 10243
NEWPORT, CA 92658

Professional Engineer, No. C 67384

Respondent.

Case No. 801-A

OAH No.

DECISION AND ORDER

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

This Decision shall become effective on February 23, 2007.

It is so ORDERED January 26, 2007.

Original Signed

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

1 BILL LOCKYER, Attorney General
of the State of California
2 MARGARET A. LAFKO, State Bar No. 105921
Supervising Deputy Attorney General
3 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101

6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2105
Facsimile: (619) 645-2061
8
9 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 JAMSHID JAMES KAVIANI
14 P.O. BOX 10243
NEWPORT, CA 92658

15 Professional Engineer, No. C 67384

16 Respondent.
17

Case No. 801-A

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 **PARTIES**

21 1. Cindi Christenson, P.E. (Complainant) is the Executive Officer of the
22 Board for Professional Engineers and Land Surveyors. She brought this action solely in her
23 official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State
24 of California, by James M. Ledakis, Deputy Attorney General.

25 2. Respondent JAMSHID JAMES KAVIANI (Respondent) is represented in
26 this proceeding by attorney Bill Marquis, Esq., whose address is Long & Marquis, Executive
27 Plaza III, 2472 Chambers Road, Suite 150, Tustin, CA 92780.
28

3. On or about July 23, 2004, the Board for Professional Engineers and Land Surveyors issued license number C 67384 to JAMSHID JAMES KAVIANI. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 801-A and will expire on March 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 801-A was filed before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 29, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 801-A is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 801-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

1 **CULPABILITY**

2 8. Respondent understands that the charges and allegations in Accusation No.
3 801-A, if proven at a hearing, constitute cause for imposing discipline upon his professional
4 engineering's license.

5 9. For the purpose of resolving the Accusation without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Accusation and that those charges constitute cause
8 for discipline. Respondent hereby gives up his right to contest that cause for discipline exists
9 based on those charges.

10 10. Respondent understands that by signing this stipulation he enables the
11 Director to order accepting the surrender of his professional engineer's license without further
12 process.

13 **RESERVATION**

14 11. The admissions made by Respondent herein are only for the purposes of
15 this proceeding, or any other proceedings in which the Board for Professional Engineers and
16 Land Surveyors or other professional licensing agency is involved, and shall not be admissible in
17 any other criminal or civil proceeding.

18 **CONTINGENCY**

19 12. This stipulation shall be subject to approval by the Board for Professional
20 Engineers and Land Surveyors. Respondent understands and agrees that counsel for
21 Complainant and the staff of the Board for Professional Engineers and Land Surveyors may
22 communicate directly with the Board regarding this stipulation and settlement, without notice to
23 or participation by Respondent or his counsel. By signing the stipulation, Respondent
24 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
25 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
26 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force
27 or effect, except for this paragraph, it shall be inadmissible in any legal action between the
28 /

1 parties, and the Board shall not be disqualified from further action by having considered this
2 matter.

3 13. The parties understand and agree that facsimile copies of this Stipulated
4 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
5 force and effect as the originals.

6 14. In consideration of the foregoing admissions and stipulations, the parties
7 agree that the Board may, without further notice or formal proceeding, issue and enter the
8 following Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 IT IS HEREBY ORDERED that Professional Engineer No. C 67384 issued to
11 JAMSHID JAMES KAVIANI shall be surrendered as of the effective date of the decision.
12 Respondent agrees never to petition the Board for the reinstatement of his surrendered Civil
13 Engineering Professional Engineer No. C 67384.

14 1. Respondent must surrender to the Board, by the effective date of the
15 decision, the wall certificate and pocket identification cards for his Civil Engineer License No. C
16 67384.

17 2. The surrender of Civil Engineer License No. C 67384 is considered a
18 disciplinary action. As such, it will be part of Respondent's licensing history and will be a matter
19 of public record.

20 3. In consideration of the Respondent's consent to the aforementioned terms,
21 the Board will waive recovery of its investigative and enforcement costs unless Respondent ever
22 applies in the future, then all costs are due and payable.

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ACCEPTANCE

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

DATED: 10/24/06

Original Signed

JAMSHID JAMES KAVIANI
Respondent

Approved:

DATED: 10/26/06

Original Signed

BILL MARQUIS, ESQ.
Attorney for Respondent**ENDORSEMENT**

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

DATED: December 1, 2006BILL LOCKYER, Attorney General
of the State of California

Original Signed

JAMES M. LEDAKIS
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 801-A

1 BILL LOCKYER, Attorney General
of the State of California
2 MARGARET A. LAFKO, State Bar No. 105921
Supervising Deputy Attorney General
3 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
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10 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

In the Matter of the Accusation Against:) CASE NO. 801-A
13)
JAMSHID JAMES KAVIANI)
14 P.O. Box 10243) ACCUSATION
Newport Beach, CA 92658)
15 Professional Engineer, No. C 67384)
16 Respondent.)
17

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about July 12, 1978, the Board for Professional Engineers and Land
24 Surveyors issued Professional Engineers license no. C 29329 to Jamshid James Kaviani. On or
25 about July 23, 2004, the effective date of the surrender, License No. C 29329 was surrendered as
26 a result of Accusation No. 750-A filed by the Board for Professional Engineers and Land
27 Surveyors. Thereafter, on or about July 23, 2004 reissued a new license, License No. C 67384,
28 which revoked Kaviani's right to practice land surveying but authorized him to only practice civil

1 engineering. License No. 67384 will expire on March 31, 2007 unless renewed.

2 **JURISDICTION**

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

7 4. Section 6775 of the Code states, in pertinent part:

8 By a majority vote, the Board may reprove, suspend for a period not to
9 exceed two years, or revoke the license or certificate of any professional engineer
registered under this chapter:

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

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

13

14 (f) Who aids or abets any person in the violation of any provision of this
chapter.

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

17 (h) Who violates any provision of this chapter.

18 5. Section 6787 of the Code states, in pertinent part:

19 Every person is guilty of a misdemeanor:

20 (e) Who uses an expired, suspended, or revoked certificate issued by the
21 board.

22

23 (g) Who, unless appropriately registered, manages, or conducts as
24 manager, proprietor, or agent, any place of business from which civil, electrical,
or mechanical engineering work is solicited, performed, or practiced, except as
authorized pursuant to subdivision (d) of Section 6738 and Section 8726.1.

25

26 (j) Who violates any provision of this chapter.

27 6. Section 6749 of the Code states, in pertinent part:

28 (a) 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. . . .

1 7. Section 404.1., of Title 16, California Code of Regulations states, in
2 pertinent part:

3 Responsible Charge - Professional Engineering

4 (a) As used in the Professional Engineers Act, the term "responsible
5 charge" directly relates to the extent of control a professional engineer is required
6 to maintain while exercising independent control and direction of professional
engineering services or creative work and to the engineering decisions which can
be made only by a professional engineer.

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8 (2) Engineering Decisions.

9 Engineering decisions which must be made by and are the responsibility of
10 the engineer in responsible charge are those decisions concerning permanent or
temporary projects which could create a hazard to life, health, property, or public
welfare, and may include, but are not limited to:

11 1. The selection of engineering alternatives to be investigated and
12 comparison of alternatives for the project. The selection or development of
design standards or methods, and materials to be used.

13 (b) Responsible Charge Criteria. In order to evaluate whether an engineer
14 is in responsible charge, the following must be considered: The professional
15 engineer who signs engineering documents must be capable of answering
16 questions asked by individuals who are licensed by the Board in the appropriate
branch of professional engineering relevant to the project and who are fully
competent and proficient by education and experience in the field or fields of
professional engineering relevant to the project.

17
18 8. Section 411 of Title 16, California Code of Regulations states, in pertinent
19 part:

20 (g)(1) All professional engineering plans, specifications, reports, or
21 documents (hereinafter referred to as "documents") shall be signed and sealed in
22 accordance with the requirements of the Professional Engineers Act and any other
laws related to the practice of professional engineering, and shall be signed and
sealed in a manner such that all work can be clearly attributed to the licensee(s) in
responsible charge of the work.

23
24 9. Section 419 of Title 16, California Code of Regulations sets forth the
25 probationary terms "[f]or violations of Business and Professions Code sections 6775 and/or 8780
26 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of
27 Title 2 of the Government Code against a professional engineering and/or a professional land
28 surveying license."

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

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

9 **VIOLATION NO. 1: BOARD REFERENCE 2004-08-248; STATEMENT OF FACTS:**

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Professional Negligence and Incompetence)

12 12. On August 6, 2004, Respondent, James Kaviani, submitted a Grading
13 Plan to the City of Newport Beach for a project at 702 Acacia Avenue, Newport Beach,
14 California; the Grading Plan included Respondent's signature on the seal of his previously
15 surrendered license number C 29329 that was surrendered on July 23, 2004.

16 13. Respondent is subject to disciplinary action under section 6775(c) for
17 negligence or incompetence in his practice by using and/or placing his seal on a grading plan
18 without authorization as set forth in paragraph 12 above.

19 **VIOLATION NO. 2; BOARD REF. 2004-08-248; STATEMENT OF FACTS:**

20 14. In a letter to the Board for Professional Engineers and Land Surveyors
21 dated October 15, 2003, Respondent stated: "Ron Winterburn who is not licensed is the manager
22 for the firm. . . ." However, the law mandates that only a registered professional engineer is
23 authorized to manage a firm that practices civil engineering.

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Professional Negligence and Incompetence)

26 15. Respondent is subject to disciplinary action under section 6775(c) for
27 negligence or incompetence for associating with and allowing a nonlicensee to practice civil
28 engineering, as set forth in paragraph 14, above.

1 THIRD CAUSE FOR DISCIPLINE

2 (Aiding and Abetting the Unlicensed Practice of Civil Engineering)

3 16. Respondent is subject to disciplinary action under section 6775(f) for
4 aiding and abetting Ron Winterburn in the unauthorized practice of civil engineering, as set forth
5 in paragraph 14, above.

6 VIOLATION NO. 3; BOARD REF. 2004-08-248; STATEMENT OF FACTS:

7 17. On August 16, 2005, State of California, Division of Investigation, Senior
8 Investigator, Lupe Caceres, conducted an interview with Respondent who answered a series of
9 questions in writing. In that interview, Respondent stated that Valley Consultants President Ron
10 Winterburn (an unlicensed person) signs contracts on behalf of Valley Consultants.

11 FOURTH CAUSE FOR DISCIPLINE

12 (Professional Negligence and Incompetence)

13 18. Respondent is subject to disciplinary action under section 6775(c) for
14 negligence or incompetence by allowing Ron Winterburn to enter into civil engineering contracts
15 for his company, Valley Consultants, as set forth in paragraph 17, above.

16 FIFTH CAUSE FOR DISCIPLINE

17 (Aiding and Abetting the Unlicensed Practice of Civil Engineering)

18 19. Respondent is subject to disciplinary action under section 6775(f) for
19 aiding and abetting by allowing Ron Winterburn to enter into civil engineering contracts for
20 Valley Consultants as set forth in paragraph 17, above.

21 VIOLATION NOS. 4-15; BOARD REF. 2004-08-248; STATEMENT OF FACTS:

22 20. Licensed Land Surveyor, Clarence Butler, LS 4184, is shown on the firm's
23 Organization Record on file with the Board as Vice President of Valley Consultants Inc. On 12
24 occasions, Butler signed a "finished grade certification letter" for projects in the City of Newport
25 Beach. For each project, a Registered Civil Engineer (Butler is not a Registered Civil Engineer)
26 is required to prepare a Grading Plan that determines the floor elevation of the buildings and the
27 elevation of the ground and drainage pipes around the building to insure surface water is carried
28 from the project in an approved and industry standard manner. Certification as to the adequacy

1 of the as-constructed condition is a requirement of the project Registered Civil Engineer, not a
2 Licensed Land Surveyor.

3 SIXTH CAUSE FOR DISCIPLINE

4 (Aiding and Abetting the Unlicensed Practice of Civil Engineering)

5 21. Respondent is subject to disciplinary action under section 6775(f) for
6 aiding and abetting Clarence Butler in the unauthorized practice of civil engineering as set forth
7 in paragraph 20, above.

8 VIOLATION NO. 16; BOARD REF. 2004-08-247; STATEMENT OF FACTS

9 22. Respondent submitted a Grading Plan for a project located at 720
10 Marigold Avenue, Newport Beach, to the City of Newport Beach that showed an incorrect
11 location of an existing retaining wall. Instead of correctly showing the wall in the public right-
12 of-way where it was located, the wall was incorrectly shown on private property which saved the
13 contractor from having to remove it. Respondent should have noted on the map, that the wall
14 had to be removed; Respondent did not. Later, the owner was forced to remove the wall and
15 construct a new retaining wall in the correct location (on private property). There was significant
16 information that should have led Respondent to correctly identify the location of the existing
17 wall: for example, the existing wall was shown in the correct location on the Topography Map
18 prepared by Clarence Butler of Valley Consultants; the existing wall was shown in the correct
19 location on Tentative Parcel Map No. 2003-206, dated September 17, 2003, as prepared by
20 Clarence Butler; and condition number eight on the Conditions of Approval for the development
21 from the City of Newport Beach stated the existing wall must be removed.

22 SEVENTH CAUSE FOR DISCIPLINE

23 (Professional Negligence and Incompetence)

24 23. Respondent is subject to disciplinary action under section 6775(c) for
25 negligence or incompetence by failing to identify the location of the wall and requiring it to be
26 removed and placed in the correct location as set forth in paragraph 22, above.

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1 **VIOLATION NO. 17; BOARD REF. 2004-08-248; STATEMENT OF FACTS:**

2 24. On August 16, 2005, State of California, Division of Investigation, Senior
3 Investigator, Lupe Caceres, held an interview with Respondent who answered a series of
4 questions in writing. Respondent stated that Ron Winterburn, President of Valley Consultants,
5 discusses the critical design decisions with clients. According to the governing law, only the
6 engineer in charge may discuss critical design criteria with the consumer.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 (Professional Negligence and Incompetence)

9 25. Respondent is subject to disciplinary action under section 6775(c) for
10 negligence or incompetence because design decisions must be conducted by the engineer in
11 responsible charge as set forth in paragraph 24 above.

12 **NINTH CAUSE FOR DISCIPLINE**

13 (Aiding and Abetting the Unlicensed Practice of Civil Engineering)

14 26. Respondent is subject to disciplinary action under section 6775(f) for
15 aiding and abetting Ron Winterburn by allowing him to discuss design criteria with consumers as
16 set forth in paragraph 24, above.

17 **VIOLATION NO. 18; BOARD REF. 2004-08-248; STATEMENT OF FACTS:**

18 27. On August 16, 2005, State of California, Division of Investigation, Senior
19 Investigator, Lupe Caceres, held an interview with Respondent who answered a series of
20 questions in writing. Questions 9 through 20 were posed by Ms. Caceres in order to determine
21 Respondent's competency in preparing a typical Grading Plan. The questions were prepared by
22 the Board's expert and reviewed ahead of time by the Board's Enforcement Analyst. The
23 Board's licensed expert was present during the question and answer period. Respondent refused
24 to answer questions 9 through 20. In accordance with the law, a professional engineer must be
25 capable of answering questions asked by the Board in the appropriate branch of professional
26 engineering.

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1 TWELFTH CAUSE FOR DISCIPLINE

2 (Aiding and Abetting the Unlicensed Practice of Civil Engineering)

3 32. Respondent is subject to disciplinary action under section 6775(f) for
4 aiding and abetting in his practice in that he allowed Ron Winterburn to sign his name to Parcel
5 Maps in paragraphs 29 and 30, above.

6 THIRTEENTH CAUSE FOR DISCIPLINE

7 (Deceit, Misrepresentation, and Fraud)

8 34. Respondent is subject to disciplinary action under section 6775(b) for
9 deceit, misrepresentation, or fraud in his practice in that he lied to the Board when he represented
10 that he did not allow his name to be signed by Ron Winterburn to Parcel Maps as set forth in
11 paragraphs 29 and 30, above.

12 PRAYER

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

- 16 1. Revoking or suspending Civil Engineer number C 67384, issued to Jamshid
17 James Kaviani ;
18 2. Ordering Jamshid James Kaviani to pay the Board for Professional Engineers
19 and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant
20 to Business and Professions Code section 125.3;
21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 9/19/06

23
24 Original Signed

25 Cindi Christensen, P.E.
26 Board for Professional Engineers and Land Surveyors
27 Department of Consumer Affairs
28 State of California
Complainant

JML:kc
80089585.wpd

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

In the Matter of the Accusation Against:

JAMSHID JAMES KAVIANI
P.O. BOX 10243
NEWPORT, CA 92658

License No. C 29329

Respondent.

Case No. 750-A

OAH No. L-2003110091

DECISION AND ORDER

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

This Decision shall become effective on July 23, 2004.

It is so ORDERED June 25, 2004.

Original Signed

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

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
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4 San Diego, CA 92101

5 P.O. Box 85266
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Facsimile: (619) 645-2061

7 Attorneys for Complainant

8
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BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 JAMSHID JAMES KAVIANI
13 P.O. BOX 10243
14 NEWPORT, CA 92658

15 License No. C 29329

16 Respondent.

Case No. 750-A

OAH No. L-2003110091

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Cindi Christenson, P.E. (Complainant) is the Executive Officer of the
22 Board for Professional Engineers and Land Surveyors. She brought this action solely in her
23 official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State
24 of California, by James M. Ledakis, Deputy Attorney General.

25 2. Respondent JAMSHID JAMES KAVIANI (Respondent) is represented in
26 this proceeding by attorney Hal Block, Esq., whose address is Musick, Peeler & Garrett, 650
27 Town Center Drive, Suite 900, Costa Mesa, CA 92626.
28

3. On or about July 12, 1978, the Board for Professional Engineers and Land Surveyors issued license number C 29329 to JAMSHID JAMES KAVIANI (Respondent). The license was in full force and effect at all times relevant to the charges brought in Accusation No. 750-A and will expire on March 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 750-A was filed before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 9, 2003. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 750-A is attached as exhibit A and incorporated herein by reference.

ADVICE AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 750-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 750-A.

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

3 RESERVATION

4 10. The admissions made by Respondent herein are only for the purposes of
5 this proceeding, or any other proceedings in which the Board for Professional Engineers and
6 Land Surveyors or other professional licensing agency is involved, and shall not be admissible in
7 any other criminal or civil proceeding.

8 CONTINGENCY

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

20 12. The parties understand and agree that facsimile copies of this Stipulated
21 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
22 force and effect as the originals.

23 13. In consideration of the foregoing admissions and stipulations, the parties
24 agree that the Board may, without further notice or formal proceeding, issue and enter the
25 following Disciplinary Order:

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4. In consideration of the Respondent's consent to the aforementioned terms, the Board will waive recovery of its investigative and enforcement costs.

APR-18-04 11:11

T-606 P.006/006 F-760

RECEIVED APR-16-04 09:58

500 3343

ACCEPTANCE

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

DATED: 4/20/04

Original Signed

JAMSHID JAMES KAVIANI
Respondent

Approved

DATED: 4/20/04

Original Signed

HAL BLOCK, ESQ.
Attorney for Respondent**ENDORSEMENT**

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

DATED: April 23, 2004BILL LOCKYER, Attorney General
of the State of California

Original Signed

JAMES M. LEDAKIS
Deputy Attorney General

Attorneys for Complainant

DOJ Backlog/Attorney ID Number: 04551116-012001860000
Stipulation.wps

Exhibit A

Accusation No. 750-A

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of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 750-A

JAMSHID JAMES KAVIANI
P.O. BOX 10243
NEWPORT BEACH, CA 92658

A C C U S A T I O N

License No. C 29329

Respondent.

Complainant alleges:

PARTIES

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

2. On or about July 12, 1978, the Board for Professional Engineers and Land Surveyors issued license number C 29329 to JAMSHID JAMES KAVIANI (Respondent). Said license will expire on March 31, 2007, unless renewed.

JURISDICTION

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

1 4. Section 8780 of the Code states in part as follows:

2 The board may receive and investigate complaints against licensed land
3 surveyors and registered civil engineers, and make findings thereon.

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

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

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

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

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

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

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

23 **Factual Allegations re: 2400 Ocean Front, Newport Beach, California**

24 7. On April 24, 2000, Respondent, Jamshid James Kavianian, a registered civil
25 engineer, certified to the City of Newport Beach Building Department that the boundary line
26 setbacks for the property located at 2400 Ocean Front, Newport Beach, CA were in compliance
27 with the approved set of plans and that the structure was located properly on the site plan.
28 Respondent certified the location of the foundation forms for the City when there were only a
29 few footings in place at the time of his certification.

30 8. In response to the Board's request to Respondent to explain his
31 certification of the correct placement of the subject property foundations, Respondent told the
32 investigator, "All form boards were in place when our field crew surveyed the property on 4-24-
33 00." However, on April 25, 2000, the Newport Beach Building Department took photographs

1 depicting that many of the forms were not yet placed.

2 9. On April 24, 2000, Respondent provided the City of Newport Beach
3 Building Department with a foundation form certification for the subject house showing a four
4 foot side yard set back on one side of the house and no set back on the other side of the house.
5 Following the Board's complaint investigation, Respondent provided the Board with a
6 foundation form certification also dated April 24, 2000, showing a 3'1" side yard set back on
7 each side of the house. Respondent was asked by the Board to explain the discrepancy.
8 Respondent did not provide an explanation for the discrepancy in side yard set back certifications
9 to the City and to the Board.

10 10. The Board requested that Respondent produce all his original survey notes,
11 record maps, calculations, center line tie notes, or any other documents that show he made a field
12 survey of the subject house. No documentation was provided by the Respondent to establish the
13 correct property lines. Respondent continues to refuse to produce documentation related to his
14 boundary survey. After being notified in May 2000 of a Board complaint related to a April 24,
15 2000, boundary survey completed by Respondent, he told the Board that he lost all his records
16 and failed to explain how his original boundary survey was performed.

17 FIRST CAUSE FOR DISCIPLINE

18 (Negligence and/or Incompetence)

19 11. Respondent is subject to disciplinary action under section 8780(b) in that
20 Respondent was negligent and/or incompetent in the practice of land surveying as follows:

21 a) Representing to the Newport Beach Building Department that all the
22 forms were correctly placed on April 24, 2000.

23 b) Representing to the Newport Beach Building Department that the
24 contractor moved the foundation form boards after his certification.

25 c) Representing to the Newport Beach Building Department that the
26 subject house was rectangular when it had multiple inward and outward jogs and extensions of
27 the foundation perimeter.

28 d) Representing to the Newport Beach Building Department with a

1 foundation form certification dated April 24, 2000, showing a four foot side yard set back on one
2 side of the house and no set back on the other side of the house. Thereafter, Respondent
3 submitted to the Board a foundation form certification dated, April 24, 2000, showing a 3'1" side
4 yard set back on each side of the building.

5 e) Respondent failed to follow standard procedure with submission of
6 proper documentation for his work. He had no survey notes, record maps, calculations on center
7 line tie notes.

8 12. Complainant incorporates by reference paragraphs 7 through 10.

9 SECOND CAUSE FOR DISCIPLINE

10 (Fraud, Deceit and/or Misrepresentation)

11 13. Respondent is subject to disciplinary action under section 8780(c) in that
12 Respondent committed fraud, deceit, and/or misrepresentation in the practice of land surveying.

13 14. Complainant incorporates by reference paragraphs 7 through 10.

14 **Factual Allegations re: 6102 West Ocean Front, Newport Beach, California**

15 15. Respondent provided a topography map and land survey for the subject
16 property located at 6102 West Ocean Front, Newport Beach, CA. Respondent provided a
17 setback and top of slab/floor elevation certificate. Respondent certified that the structure was
18 located 3'2" away from the adjacent property line when in fact the house was mis-located 8
19 inches to within 2'6" of the adjacent house. The misplacement of the structure violated the
20 Uniform Building Code and fire safety codes.

21 16. On November 8, 1999, Respondent filed a setback and top of slab
22 certification with the City of Newport Beach Building Department certifying that all setbacks
23 were in compliance with the plans to insure that the structure was located properly on the site per
24 the approved set of drawings.

25 17. On July 28, 2000, Respondent replied to the Board's inquiries concerning
26 the aforementioned misplacement of the subject house. Respondent accepted responsibility for
27 the error when he stated, "I am responsible for that error, since the work was supervised by me."
28 Nevertheless, the error was discovered at approximately 90% of completion of construction of

1 the house. The error will result in a significant financial injury to the homeowners.

2 THIRD CAUSE FOR DISCIPLINE

3 (Negligence and/or Incompetence)

4 18. Respondent is subject to disciplinary action under section 8780(b) in that
5 Respondent was negligent and/or incompetent in the practice of land surveying.

6 19. Complainant incorporates by reference paragraphs 15 through 17.

7
8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors
11 issue a decision:

12 1. Revoking or suspending license number C 29329 issued to JAMSHID
13 JAMES KAVIANI;

14 2. Ordering JAMSHID JAMES KAVIANI to pay the Board for Professional
15 Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this
16 case, pursuant to Business and Professions Code section 125.3;

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

18 DATED: 9/10/03
19

20 Original Signed

21 CINDI CHRISTENSON, P.E.

22 Executive Officer

23 Board for Professional Engineers and Land Surveyors

24 Department of Consumer Affairs

25 State of California

26 Complainant
27
28