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

In the Matter of the Accusation Against:

PHILIP GOALWIN
1405 Ensley Drive
Bakersfield, CA 93312
Professional Geologist License No. 4779
Respondent.

Complainant alleges:

PARTIES

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

2. On or about March 21, 1990, the Board for Professional Engineers, Land Surveyors,
and Geologists ("Board") issued Professional Geologist License No. 4779 to Philip Goalwin
("Respondent"). The Professional Geologist License was in full force and effect at all times
relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers, Land
Surveyors, and Geologists, Department of Consumer Affairs, under the authority of the following
laws. All section references are to the Business and Professions Code unless otherwise indicated.
4. Section 118 of the Code provides in pertinent part:

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, “board” includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and “license” includes “certificate,” “registration,” and “permit.”

STATUTORY PROVISIONS

5. Section 490 of the Code provides in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code…

6. Section 493 of the Code provides:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."
7. Section 7860 of the Code provides:

(a) The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any professional geologist, geophysicist, or person granted temporary authorizations pursuant to Sections 7848 and 7848.1, and make findings thereon.

(b) By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any geologist or geophysicist registered hereunder, or may publicly reprove or revoke the temporary authorization granted to any person pursuant to Section 7848 or 7848.1, on any of the following grounds:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a geologist or geophysicist.

(2) Misrepresentation, fraud, or deceit by a geologist or geophysicist in his or her practice.

(3) Negligence or incompetence by a geologist or geophysicist in his or her practice.

(4) Violation of any contract undertaken in the capacity of a geologist or geophysicist.

(5) Fraud or deceit in obtaining a certificate to practice as a geologist or geophysicist, or in obtaining a temporary authorization to practice pursuant to Section 7848 or 7848.1.

(c) By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or may revoke the certificate of any geologist or geophysicist registered under this chapter, or may publicly reprove or revoke the temporary authorization granted to any person pursuant to Section 7848 or 7848.1, for unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

(1) Aiding or abetting any person in a violation of this chapter or any regulation adopted by the board pursuant to this chapter.

(2) Violating this chapter or any regulation adopted by the board pursuant to this chapter.

(3) Conduct in the course of practice as a geologist or geophysicist that violates professional standards adopted by the board.

8. Section 7863 of the Code provides:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a geologist or geophysicist is deemed to be a conviction within the meaning of this article. The board may order the certificate or authorization suspended or revoked, or may decline to issue a certificate or authorization, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.
REGULATORY PROVISIONS

9. California Code of Regulations, Title 16, section 3065, provides:

To protect and safeguard the health, safety, welfare, and property of the public, and California's environmental quality, every person who is licensed by the Board for Professional Engineers, Land Surveyors, and Geologists (Board) as a professional geologist or professional geophysicist, including licensees employed in any manner by a governmental entity or in private practice, shall comply with the professional standards in this section. A violation of any of the following professional standards shall constitute unprofessional conduct and shall be sufficient grounds for disciplinary action.

(a) Compliance with Applicable Law:
A licensee shall provide all geologic and geophysical services in a manner consistent with applicable laws, codes, ordinances, rules and regulations. A licensee may obtain and rely upon the knowledge and advice of other professionals (e.g., architects, attorneys, professional engineers, other professional geologists and geophysicists, land surveyors, and other qualified persons) concerning the intent and meaning of such laws, codes, and regulations.

(b) Competence:
(1) Licensed geologists or licensed geophysicists (together with those whom the licensee may engage as consultants) shall perform or offer to perform only those professional services for which they are qualified by education, training, experience, and licensure as required by law, in the specific technical and scientific areas involved.

(2) When practicing geology or geophysics, a licensee shall act with competence and reasonable care, and shall apply the technical knowledge and skill which is ordinarily practiced by licensees in good standing, practicing in this state under similar circumstances and conditions.

(c) Representations:
(1) A licensee shall not misrepresent or permit the misrepresentation of his or her professional qualifications, affiliations; or purposes, or those of the institutions, organizations or other businesses with which they are associated.

(2) A licensee may advertise or solicit those professional services for which he or she is authorized by licensure, provided such services are within his or her field of competence.

(3) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.

(4) A licensee shall not misrepresent to a prospective or existing client, the licensee's scope of responsibility in connection with those professional services for which the licensee is receiving or will receive compensation, whether directly or indirectly. Specifically, a licensee who represents that a project was completed under his or her responsible charge (i.e., stamped and/or signed) must also have maintained responsible charge of the work.

(5) A licensee shall only express professional opinions which have a basis in fact, are within the scope of the licensee's own experience or knowledge, and are generally accepted geologic or geophysical principles.

(6) A licensee shall attribute proper credit to others for their professional work or professional contribution, and shall not misappropriate the professional work of others.

(7) A licensee shall not knowingly permit the publication or use of his or her data, reports, maps, plans, or other professional documents for any unlawful purpose.
(8) A licensee shall not falsely or maliciously attempt to injure, impugn or, in fact injure the professional reputation or business of others.

(9) A licensee shall not misrepresent data or its relative significance in any geologic or geophysical work product or oral conveyance of his or her professional opinion.

(10) A licensee shall not misrepresent or conceal the scope of his or her professional responsibility in connection with those professional services for which the licensee is claiming any responsibility or credit, or for which the licensee is receiving any compensation.

(11) When providing information to the Board pursuant to another's application for licensure to practice professional geology or geophysics, a licensee shall accurately represent his or her knowledge of the applicant's qualifications and qualifying experience.

(d) Conflict of Interest:

(1) A licensee shall not concurrently engage in any other business, occupation or have a financial interest in any entity that may impair his or her independent judgment, objectivity; or which may create a conflict of interest in rendering his or her professional services.

(2) A licensee shall not accept compensation for his or her professional services from more than one party on any project, endeavor, or proceeding unless the circumstances are fully disclosed and agreed to in writing by all concerned parties.

(3) If a licensee has any business association or financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the licensee shall fully disclose in writing to his or her client(s) or employer(s) the nature of the business association or financial interest. If the client(s) or employer(s) object(s) to such association or financial interest, the licensee shall either terminate such association or interest, or offer to give up the project or employment.

(4) A licensee shall not solicit or accept payments, rebates, refunds, commissions, or compensation, whether in the form of money or otherwise from other professionals, contractors, suppliers of material, systems or equipment in return for specifying their products or professional services to a client or employer of the licensee.

(e) Confidential Information:

As used in this section, “confidential information” means all information, specifically identified as confidential by the licensee's client, employer, representative, or other related entity. Confidential information obtained by a licensee in his or her professional capacity, shall not be disclosed by the licensee without prior permission, except under the following specific conditions:

(1) disclosures made in response to a subpoena or summons enforceable by an order of a court;

(2) disclosures made in response to an official inquiry from a governmental regulatory agency;

(3) disclosures made by a licensee to another licensee to the extent necessary for purposes of professional consultation;

(4) disclosures made when required by law, code, or regulation.

(5) disclosures made upon discovery of a hazard within the licensee's field of professional expertise, which, in the licensee's professional opinion, is a threat to the health, safety and welfare of the public.

(6) disclosures made when providing evidence to the Board concerning another licensee or unlicensed individual, who may have violated any part of the Geologist and Geophysicist Act or this Section;

(7) disclosures made regarding alleged illegal conduct; or

(8) disclosures made in an adjudicatory proceeding or pursuant to an order of the court.

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(f) Document Submittal
(1) A licensee shall not misrepresent the completeness of any professional geologic or geophysical document submitted to any governmental or regulatory agency.
(2) A licensee shall not misrepresent the completeness of any professional geologic or geophysical document prepared for his or her client, employer, or other involved party.

**COST RECOVERY**

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

**FIRST CAUSE FOR DISCIPLINE**

(Conviction of a Substantially Related Crime)

11. Respondent is subject to discipline under Code sections 490 and 7860(b)(1), in accordance with California Code of Regulations, Title 16, section 3065, because the Respondent has been convicted of a crime substantially related to the qualifications, functions, and duties of a geologist or geophysicist. The circumstances are as follows:

a. On or about February 14, 2007, in the Superior Court of the State of California, County of Sacramento, the Respondent entered a no contest plea and was convicted of the crime of Presentation of Fraudulent Claims, in violation of Penal Code section 72, a misdemeanor. The Respondent was sentenced to three (3) years probation, ordered to complete 354 hours of an Alternative Sentencing Program and pay restitution of $9,586.69 to the California State Water Resources Control Board. (*People of the State of California v. Phillip Goalwin; Superior Court of the State of California, County of Sacramento, 2007, No. 06F09824*).

b. The circumstances surrounding the conviction are that between August 1, 2004 and December 30, 2005, the Respondent unlawfully and with the intent to defraud, presented for allowance and payment of a false and fraudulent claim, bill, account, voucher, and writing. The Respondent presented six (6) fraudulent invoices for payment to the California State Water Resources Control Board.
12. The Respondent is president of Environmental Engineering Consulting and Remediation, Inc., aka E2C Remediation ("E2C"). E2C is an environmental engineering and consulting firm with offices in Bakersfield and Roseville, CA. E2C provides environmental cleanup and consulting services to gas stations throughout California.


14. On or about February 26, 2010, a judgment was entered against E2C. The judgment included a civil liability of $150,000.00 that was stayed for three years, pending compliance with injunctive relief terms. One of the injunctive relief terms prohibited E2C from submitting or causing to be submitted to the Fund, any claim or request for reimbursement containing false or misleading information. (People of the State of California ex rel. Attorney General Edmund G. Brown Jr., in his independent capacity, and the State Water Resources Control Board v. E2C Remediation, LLC, et al.; Superior Court of the State of California, County of Sacramento, 2010, No. 07AS04626).

15. On or about August 21, 2012, a Motion to Enforce Judgment was filed on behalf of the State Water Resources Control Board against E2C. The motion sought $150,000.00 as a civil liability and alleged that E2C failed to follow the terms of a February 26, 2010 judgment in Sacramento County Superior Court. (People of the State of California ex rel. Attorney General Kamala D. Harris in her independent capacity, and the State Water Resources Control Board v. E2C Remediation, LLC, et al.; Superior Court of the State of California, County of Sacramento, 7
The August 21, 2012 Motion to Enforce Judgment alleged that E2C had violated the injunctive relief terms by submitting false or misleading claims to the Fund, including:

a. On or about June 8, 2010, E2C submitted a claim for $6,168.60 related to a Chico, CA site. This claim was a resubmission of a previously disallowed claim.

b. On or about July 1, 2011, E2C submitted a claim for $7,620.07 related to a Reedley, CA site. This claim included unapproved costs for 56 days of unauthorized operation of a soil vapor extraction system.

c. On or about August 10, 2010, E2C submitted a claim for $1,342.53 related to a Tulare, CA site for utility services from Southern California Edison for the period of May 17, 2006 to June 16, 2006. On August 11, 2010, the Fund denied this claim. However, on or about May 11, 2011, E2C submitted another claim for a different amount that sought reimbursement of $1,167.42 for utility services from Southern California Edison for the period of May 17, 2006 to June 16, 2006. The resubmitted claim did not include an invoice number.

d. On or about May 19, 2011, E2C submitted a claim for $6,648.59, associated with work on February 3, 2011, under invoice 1.1.194411. On or about August 8, 2011, E2C submitted another claim for a different amount that sought reimbursement for work allegedly performed on the same day, under the same invoice number: $122.38, February 3, 2011, 1.1.194411.

e. On or about May 19, 2011, E2C submitted a claim amount for $195.00, associated with work on March 3, 2011, under invoice 3.1.194411. On or about August 8, 2011, E2C submitted another claim for a different amount that sought reimbursement for work allegedly performed on the same day, under the same invoice number: $263.00, March 3, 2011, invoice 3.1.194411.

f. On or about May 19, 2011, E2C submitted a claim amount for $517.50, associated with April 13, 2011, under invoice 4.1.194411. On or about August 8, 2011, E2C submitted another claim for a different amount that sought reimbursement for work allegedly performed on the same day, under the same invoice number: $320.00, April 13, 2011, invoice 4.1.194411.
17. On or about February 15, 2013, the Sacramento County Superior Court entered an order, pursuant to a Stipulation Re: Motion to Enforce Judgment and Modification of Stipulated Judgment, which requires E2C to pay a civil liability to the State Water Resources Control Board in the amount of $75,000.00. E2C expressly denied fault or liability for allegedly failing to comply with the terms of the stayed penalty. (*People of the State of California ex rel. Attorney General Kamala D. Harris in her independent capacity, and the State Water Resources Control Board v. E2C Remediation, LLC, et al.; Superior Court of the State of California, County of Sacramento, 2013, No. 07AS04626)*.

**SECOND CAUSE FOR DISCIPLINE**

(*Misrepresentation, Fraud, and Deceit*)

18. Respondent is subject to discipline under Code section 7860(b)(2), in accordance with California Code of Regulations, Title 16, section 3065, for unprofessional conduct because the Respondent committed an act of misrepresentation, fraud, or deceit by a geologist or geophysicist in his or her practice. The circumstances are as follows:

a. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, as though set forth fully herein.

b. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 through 17, as though set forth fully herein.
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Professional Geologist License No. 4779, issued to Philip Goalwin;

2. Ordering Philip Goalwin to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 7/12/13

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and Geologists
Department of Consumer Affairs
State of California
Complainant