

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

In the Matter of the Accusation against:)	
)	
VALENTIN CONSTANTINESCU)	Case No. 1219-A
1962 Muscovy Road)	
West Sacramento, CA 95691)	OAH No. 2020010335
)	
Professional Geologist License, No. 7503,)	
)	
Respondent.)	
_____)	

DECISION

Pursuant to Government Code section 11517, the Board for Professional Engineers, Land Surveyors, and Geologists of the State of California hereby adopts the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

In adopting this Proposed Decision as its Decision, the Board for Professional Engineers, Land Surveyors, and Geologists has made the following technical or other minor change pursuant to Government Code section 11517(c)(2)(C):

The dollar amount of \$5,712.50 as identified in the Order is corrected to \$4,000.00, to be consistent with the costs as described in Paragraph 10 of the Legal Conclusions on Page 13 of the Proposed Decision.

This Decision shall become effective on January 14, 2021.

IT IS SO ORDERED December 10, 2020.

Original Signed

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:

VALENTIN CONSTANTINESCU, Respondent

Case No. 1219-A

OAH No. 2020010335

PROPOSED DECISION

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephone conference on October 12, 2020, in Sacramento, California.

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

Respondent Valentin Constantinescu represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 12, 2020.

FACTUAL FINDINGS

1. On May 21, 2003, the Board issued respondent Geologist License Number GEO 7503 (license). Respondent's license will expire on July 31, 2021, unless renewed or revoked.

2. On December 12, 2019, complainant signed and subsequently filed the Accusation in his official capacity. Complainant seeks to discipline respondent's license based on a criminal conviction respondent received in January 2019. In addition, complainant seeks to discipline respondent's license for misrepresentation relating to performing or offering professional services for which he was not licensed, and engaging in unprofessional conduct.

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

Criminal Conviction

4. On January 9, 2019, in the Superior Court of California, County of Santa Clara, in Case No. C1888019, on a plea of nolo contendere, respondent was convicted of violating Penal Code section 182, subdivision (a)(1), conspiracy to commit a crime, the crime being a violation of Business and Professions Code section 7180,

subdivision(a),¹ a felony. Respondent admitted to Overt Act 1, that on or about September 8, 2016, and September 1, 2017, respondent advertised asbestos inspection, sampling, and testing services under the name ALFA Environmental and Remediation Services, Inc. (ALFA Environmental). Respondent also admitted to Overt Act 3, that in furtherance of the conspiracy, on or about September 12, 2016, respondent created a Google email account with a subscriber name of "Pat Higgins" and an email address of phiggins76@gmail.com. The court placed respondent on three years of formal probation and ordered him to pay \$1,230 in court fines and fees and \$5,970 in restitution, and serve four months in jail on an electronic monitoring program.

5. The circumstances underlying the crime occurred in 2016 and 2017. Respondent provided asbestos consulting services in Santa Clara County without a license as required by the State of California. Respondent advertised asbestos inspection, sampling and testing services through ALFA Environmental, a company he owned since 1992, as a licensed geologist. During the Office of the District Attorney's investigation of the matter, the investigation revealed an invoice was sent to a customer of ALFA Environmental from the phiggins76@gmail.com email address for asbestos analysis. During the investigation, respondent admitted to sending asbestos testing results to and from the email account.

¹ Business and Professions code section 7180, subdivision (a), prohibits a person from engaging in the practice of an asbestos consultant unless certified by the California Division of Occupational Safety and Health.

Respondent's Evidence

6. Respondent is 65 years old and is married. He has been a licensed geologist in the United States for 17 years, and worked as a geophysicist and project leader for 10 years in Romania.² In his work as a professional geologist, he has acted as an expert witness for clients. Respondent last worked as a licensed geologist three years ago. He retired because of his age and health. Respondent's license has not been disciplined previously. He wants to retain his license in case he decides to start working in the future.

7. Respondent testified about his crime. He admitted he is not a certified asbestos consultant. Respondent denied collecting samples or going to the lab for asbestos testing. However, he admitted to signing an asbestos survey report after receiving a cease and desist letter from the California Division of Occupational Safety and Health in September 2016. He admitted that signing the asbestos survey report was a "mistake" and that he "is paying for it."

8. Respondent believes it is unfair to be before the Board in this matter because he already received a criminal conviction. He does not believe his crime is related to his qualifications, functions, and duties as a geologist. Respondent also asserted that he did not make any misrepresentations as a geologist. Respondent was only required to serve two months in jail. He is still paying fees related to his conviction. He will be on felony probation until 2022. He has not received any other

²Geology is the study of earth, rocks, and minerals that are part of the earth's crust. Respondent agreed that asbestos is a naturally occurring mineral in the earth's crust.

criminal convictions or had any other contact with law enforcement since his conviction.

9. Respondent had a heart attack in 2012, and was diagnosed with heart failure. He received a heart transplant in January 2016. He believes the heart attack and heart failure affected his "mental health" and "general health" because "he did not have enough blood in his brain." According to respondent, his medical condition caused him to "not think correctly." He "was not normal" and his recovery was "slow." He believes his medical condition caused him to participate in his crime. He believes his health is "better" today.

10. Respondent testified he is unable to pay the enforcement costs complainant seeks to recover because of his financial circumstances. He receives approximately \$1,300 per month in social security benefits. Respondent initially testified his wife works and owns her own environmental assessment company, but later testified she has not worked in several months. He stated his household income is approximately \$2,500 per month; however, his living expenses far surpass his household income. Respondent said his family members help him pay for his living expenses.

Discussion

11. The Board established by clear and convincing evidence that respondent was convicted of a crime substantially related to the qualifications, functions or duties of a geologist. He conspired to engage in the practice of an asbestos consultant without being certified to do so. He advertised asbestos inspection, sampling, and testing services under this company name. As a licensed geologist, he was an expert in the earth's minerals, but he was not certified to offer asbestos inspection, sampling,

and testing services. The Board further established respondent misrepresented his authority to perform or offer to perform professional services as an asbestos consultant and engaged in unprofessional conduct in advertising asbestos inspection, sampling, and testing services for which he was not certified to perform.

12. 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, § 3061, subd. (b).) The criteria that are relevant here include:

- 1) Nature and severity of the act(s) or offense(s) under consideration as grounds for suspension or revocation.
- 2) Evidence of any act(s) committed prior to or subsequent to the act(s) or offense(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.
- 3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
- 4) The extent to which the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

[¶] . . . [¶]

- 6) Evidence, if any, of rehabilitation submitted by the licensee.

7) Total criminal record.

13. Respondent has complied with the terms of his criminal probation and he has not had any other criminal convictions. Also, his license has not been previously disciplined.

14. However, respondent's crime was serious. He was licensed as a geologist and used his company to advertise asbestos inspection, sampling, and testing services, despite not having a license to do so. It was uncontested the potential harm that could have or may occurred because of his conduct based upon the hazardous material at issue. Respondent relied on his medical condition as the reason he participated in the crime; however, he provided no medical evidence to substantiate that fact. He lacked insight into the seriousness of his conduct and the harm that could have transpired because of his conduct. In addition, less than two years have elapsed since respondent received his felony conviction.

15. Moreover, although respondent is complying with the terms and conditions of his felony probation, he will remain on probation until 2022. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes . . . while on probation or parole"].) A truer indication of rehabilitation is demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

16. When all of the evidence is weighed and considered, respondent did not present sufficient evidence of rehabilitation to support allowing him to retain his license at this time. He provided no reasonable assurances that he will not engage in

similar conduct in the future. At this time, it is necessary to revoke respondent's license in order to protect the public health, safety, and welfare.

Enforcement Costs

17. Pursuant to Business and Professions Code section 125.3, complainant has requested reimbursement of the costs incurred for the enforcement of this matter, in the amount of \$5,712.50. The enforcement costs are detailed in the Certification of Prosecution Costs: Declaration of Seth A. Curtis, dated October 1, 2020. The certification is accompanied by a report describing the general tasks performed, the time spent on each task, the hourly pay rate, the date the task was completed, and the method of calculating the costs.

18. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court identified the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. (*Id.* at p. 45.)

19. In this case, all of the charges were established and respondent did not raise a colorable challenge to the proposed discipline. However, respondent asserted a financial inability to pay the requested costs. The reasonableness of the cost amount is 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. Business and Professions Code section 490, provides:

(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.

[¶] . . . [¶]

(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. . . .

3. Business and Professions Code section 7860, states:

(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, 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.

[¶] . . . [¶]

(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, for unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

[¶] . . . [¶]

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

4. A crime is substantially related to the qualifications, functions, and duties of a geologist if "to a substantial degree it evidences present or potential unfitness" of such geologist to "perform the functions authorized by his registration in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 3060.)

5. In order to protect and safeguard the health, safety, welfare, property of the public and California's environmental quality, a licensed geologist must comply with the professional standards set forth in California Code of Regulations, title 16 section 3065. California Code of Regulations, title 16, section 3065 provides that

violating any of the following professional standards constitutes unprofessional conduct and provides sufficient grounds for disciplinary action:

(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.

[¶] . . . [¶]

(c) Representations:

[¶] . . . [¶]

(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.

6. As set forth in Factual Findings 4, 5, and 11, respondent was convicted of a crime that is substantially related to the qualifications, functions, or duties of a geologist. The crime is substantially related to the qualifications, functions, and duties of a licensed geologist because respondent used his business that he performs professional geologist services to hold himself out as qualified to offer asbestos inspection, sampling, and testing services. Respondent's license did not allow him to perform asbestos inspection, sampling and testing services, as he was not qualified by

education, training, experience to do such work. However, respondent still offered to perform those professional services. Consumers could have reasonably believed that his license allowed him to perform the asbestos-related services, which respondent did nothing to correct. Therefore, cause exists to discipline respondent's license under Business and Professions Code section 490 and 7860, subdivision (b)(1), in conjunction with California Code of Regulations, title 16, section 3060.

7. As set forth in Factual Findings 4 and 5, respondent performed or offered to perform professional services for which he was not licensed as required by law for customers of his company ALFA Environmental. Consequently, cause exists to discipline respondent's license under Business and Professions code section 7860, subdivision (b)(2), in conjunction with California Code of Regulations, title 16, section 3065, subdivision (b)(1).

8. As set forth in Factual Findings 4 and 5, respondent engaged in unprofessional conduct when he advertised or solicited professional services for which he was not authorized by licensure. Accordingly, cause exists to discipline respondent's license under Business and Professions Code section 7860, subdivision (c)(2), in conjunction with California Code of Regulations, title 16, section 3065, subdivisions (b)(1) and (c)(2).

Appropriate Discipline

9. As set forth in Factual Findings 11 through 16, respondent provided insufficient evidence of rehabilitation to justify any disciplinary action short of revocation at this time.

Costs

10. Complainant requested costs of enforcement in the total amount of \$5,712.50, pursuant to Business and Professions Code section 125.3. Respondent testified to his inability to pay the enforcement costs, which was not contested. When all of the *Zuckerman* factors are considered, the enforcement costs are reduced to \$4,000. Considering respondent's financial obligations, he shall be permitted to pay these costs in a payment plan approved by the Board.

ORDER

1. The geologist license GEO 7503, issued to Valentin Constantinescu, is hereby revoked.

2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3, in the amount of \$5,712.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

DATE: October 27, 2020

Original Signed

Dena Coggins (Oct 27, 2020 08:41 PDT)

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings

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

13 In the Matter of the Accusation Against:

Case No. 1219-A

14 **VALENTIN CONSTANTINESCU**
1962 Muscovy Rd.
15 West Sacramento, CA 95691

ACCUSATION

16 **Geologist License No. GEO 7503**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about May 31, 2003, the Board issued Geologist License Number GEO 7503 to
24 Valentin Constantinescu (Respondent). The Geologist License was in full force and effect at all
25 times relevant to the charges brought herein and will expire on July 31, 2021, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 490 provides, in pertinent part, that a board may suspend or revoke a license
6 on the ground that the licensee has been convicted of a crime substantially related to the
7 qualifications, functions, or duties of the business or profession for which the license was issued.

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

12 **STATUTORY PROVISIONS**

13 [6. Section 7860 of the Code states, in pertinent part:

14 . . .

15 (b) By a majority vote, the board may publicly reprove, suspend for a period
16 not to exceed two years, or revoke the certificate of any geologist or geophysicist
registered hereunder, on any of the following grounds:

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

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

20 (c) By a majority vote, the board may publicly reprove, suspend for a period not
21 to exceed two years, or may revoke the certificate of any geologist or geophysicist
registered under this chapter, for unprofessional conduct. Unprofessional conduct
22 includes, but is not limited to, any of the following:

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

24 **REGULATORY PROVISIONS**

25 7. California Code of Regulations, title 16 (CCR), section 3060 states that:

26 For the purpose of denial, suspension, or revocation of the registration of a geologist,
27 specialty geologist, geophysicists or specialty geophysicists pursuant to Division 1.5
(commencing with Section 475) of the Business and Professions Code, a crime or act shall
28 be considered substantially related to the qualifications, functions, and duties of a geologist,
specialty geologist, geophysicists or specialty geophysicists if to a substantial degree it

1 evidences present or potential unfitness of such geologist or geophysicists to perform the
2 functions authorized by his registration in a manner consistent with the public health, safety
or welfare. Such crimes or acts shall include, but not be limited to, the following:

3 (a) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and
Professions Code

4 8. CCR, section 3065 states, in pertinent part:

5 To protect and safeguard the health, safety, welfare, property of the public, and
6 California's environmental quality, every person who is licensed by the Board as a
7 professional geologist or professional geophysicist, including licensees employed in any
8 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.

9 (a) Compliance with Applicable Law:

10 A licensee shall provide all geological and geophysical services in a manner
11 consistent with applicable laws, codes, ordinances, rules, and regulations. A licensee may
12 obtain and rely upon the knowledge and advice of other professionals (e.g., architects,
13 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.

14 (b) Competence:

15 (1) Licensed geologists or licensed geophysicists (together with those whom the
16 licensee may engage as consultants) shall perform, or offer to perform, only those
17 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.

18 (c) Representations:

19 . . .

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

22 **COST RECOVERY**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Substantially Related Crime)

3 10. Respondent is subject to disciplinary action under sections 490 and 7860, subdivision
4 (b)(1) in conjunction with CCR, section 3060, in that Respondent was convicted of a crime
5 substantially related to the qualifications, functions, or duties of a geologist. On or about January
6 9, 2019, Respondent was convicted of one (1) felony count of violating Penal Code section 182,
7 subdivision (a)(1), (conspiracy) in the criminal proceeding entitled: *The People of the State of*
8 *California v. Valentina Constantinescu and Valentin Constantinescu* (Santa Clara County
9 Superior Court, Case No. C1888019). Respondent admitted to overt acts numbers one (1) and
10 three (3). Overt act number one (1) alleged that in furtherance of the conspiracy, Respondent and
11 Valentina Constantinescu on or about September 8, 2016, and September 1, 2017, advertised
12 asbestos inspection, sampling, and testing services under the name ALFA Environmental
13 Remediation Services, Inc. (“ALFA”). Overt act number three (3) alleged that in the furtherance
14 of the conspiracy and to effect its object, Respondent on or about September 12, 2016, created a
15 google e-mail account with a subscriber name of “Pat Higgins” and an e-mail address of
16 phiggins767@gmail.com. As a result Respondent was placed on three (3) years of formal
17 probation, ordered to serve four (4) months on electronic monitoring, pay \$5,970.00 in restitution,
18 and ordered to pay various fines and fees. The circumstances surrounding the conviction are that
19 on or between September 8, 2016, and September 1, 2017, Respondent conspired to commit a
20 crime, in that Respondent advertised asbestos inspection, sampling, and testing services without
21 the proper certification. In furtherance of the conspiracy, Respondent created an email account
22 with a subscriber name of “Pat Higgins” and an e-mail address of phiggins767@gmail.com.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Misrepresentation)

25 11. Respondent is subject to disciplinary action under sections 7860, subdivision (b)(2) in
26 conjunction with CCR, section 3065, subdivision (b)(1), in that Respondent performed or offered
27 to perform professional services for which he was not licensed as required by law as set forth in
28 paragraph 10 above, and incorporated herein by reference.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 12. Respondent is subject to disciplinary action under sections 7860, subdivision (c)(2) in
4 conjunction with CCR, section 3065, subdivision (b)(1), (c)(2), in that Respondent advertised or
5 solicited professional services for which he was not authorized by licensure as set forth in
6 paragraph 10 above, and incorporated herein by reference.

7 **PRAYER**

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

- 11 1. Revoking or suspending Geologist License Number GEO 7503, issued to Valentin
- 12 Constantinescu;
- 13 2. Ordering Valentin Constantinescu to pay the Board for Professional Engineers, Land
- 14 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
- 15 pursuant to Business and Professions Code section 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: 12/12/19

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

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