

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

In the Matter of the Accusation against:	)	
	)	
PATRICK DARE OSBORNE	)	Case No. 816-A
P. O. Box 6028	)	
Folsom, CA 95763	)	OAH No. 2008100323
	)	
Land Surveyor License No. L 3538,	)	
	)	
Respondent.	)	
_____	)	

DECISION

Pursuant to Government Code section 11517(c)(2), the Board for Professional Engineers and Land Surveyors 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 and Land Surveyors has made the following technical or other minor changes pursuant to Government Code section 11517(c)(2)(C):

The typographical errors in Legal Conclusion 18, Page 20, that reference Business and Professions Code sections 6782 and 6785 are corrected to reference Business and Professions Code sections 8762 and 8765.

This Decision shall become effective on December 24, 2009.

IT IS SO ORDERED November 18, 2009.

*Patrick J. Tan*

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BOARD FOR PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
Department of Consumer Affairs  
State of California

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PATRICK DARE OSBORNE  
P.O. Box 6028  
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Respondent.

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OAH No. 2008100323

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 14 through 17, 2009, in Sacramento, California.

Brian S. Turner, Deputy Attorney General, represented Joanne Arnold, P.E., Interim Executive Officer (complainant), Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs.

Patrick Dare Osborne (respondent) appeared on his own behalf.

Evidence was received on July 14 through 17, 2009. The record was left open for respondent to file a written closing argument, and for complainant to file a written reply. On August 7, 2009, respondent filed his written closing argument, which was marked for identification as Exhibit B. On August 13, 2009, complainant filed a written reply, which was marked for identification as Exhibit 43. The record was closed and the matter was submitted for decision on August 13, 2009.

**COMPLAINANT'S MOTION TO STRIKE**

1. In her written reply, complainant objects to, and moves to strike, portions of respondent's written closing argument and attachments thereto on the grounds that they contain facts not in evidence.

2. At hearing, respondent was advised that his written closing argument could not contain any references to factual matters that witnesses had not testified to under oath or any documents that were not offered and admitted into evidence during the course of the hearing. Respondent acknowledged that he understood this.<sup>1</sup>

3. In his written closing argument, respondent asserts facts not testified to at hearing. He also includes documents not offered or admitted into evidence during the course of the hearing.

4. All the factual assertions set forth in respondent's closing argument that were not testified to at hearing are stricken, including all such factual assertions set forth in page 1, paragraph A; page 4, paragraph B; pages 4 and 5, paragraph C; pages 5 and 6, paragraph D; and page 6, paragraph E. All documents attached to respondent's written closing argument that were not offered and admitted into evidence at hearing are stricken.

#### FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.

2. On December 13, 1968, the Board issued Land Surveyor License Number L 3538 to respondent. The license will expire on June 30, 2010, unless renewed or revoked. Complainant seeks to revoke respondent's license based upon his alleged violations of the Professional Land Surveyors' Act (Act), Business and Professions Code section 8700 et seq., particularly his refusal to file records of survey or corner records in accordance with the Act's requirements and his misrepresentations to clients, as described below.

#### Thacker Property/Hidden Valley 3 Subdivision

3. Gary and Carolyn Thacker own property in Placer County (Thacker Property). The Thacker Property adjoins a subdivision called Hidden Valley Subdivision, Unit 3 (Hidden Valley 3), which was recorded in the Official Records of Placer County in 1951. The record shows that a private road easement (Private Road) was created from Auburn Folsom Road to the Thacker Property. Eleven parcels within Hidden Valley 3 adjoin the Private Road. The Private Road's centerline is coincident with the property boundaries of these adjoining parcels. As reflected in the 1951 subdivision record, the corners of these parcels were once monumented by 2" by 2" wooden hubs along the Private Road centerline.

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<sup>1</sup> At hearing, respondent chose not to testify. Complainant called respondent as a witness pursuant to Government Code section 11513, subdivision (b), which, in relevant part, provides: "If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination." Respondent sought to invoke his constitutional right not to testify against himself. In accordance with *People v. Whelchel* (1967) 255 Cal.App.2d 455, 461, respondent was ordered to testify, but was advised that he could refuse to disclose any matter that may tend to incriminate him in the commission of a punishable crime.

4. In March 2003, the Thackers hired John Wilusz, a licensed land surveyor, to survey and monument the Thacker Property. As part of his survey, Mr. Wilusz retraced the centerline of the Private Road. During the course of his survey, Mr. Wilusz could not find the 2" by 2" wooden hubs shown on the 1951 recorded subdivision. But Mr. Wilusz did find three monuments placed near property corners along the Private Road. These monuments were placed by respondent and stamped with respondent's license number - LS 3538.<sup>2</sup> Respondent did not file a record of survey or a corner record relating to the three monuments he set in the Private Road.

5. On June 20, 2003, Sally Strubinger, an Enforcement Analyst in the Board's Enforcement Unit, sent a letter to respondent, which notified him that he had violated the Act by setting monuments without filing a record with the Placer County Surveyor's Office. In her letter, Ms. Strubinger gave respondent until July 18, 2003, to submit a response.

6. Respondent submitted a letter dated July 9, 2003, in response to Ms. Strubinger's June 20, 2003 letter. In his July 9, 2003 letter, respondent disputed that the Act requires a licensed land surveyor to file a record of survey or corner record when he or she places a new monument to replace a missing monument:

It has been accepted and determined for many years by the 'Board' and the California State Legislature that if a permanent monument has been set to replace a missing property corner that has been previously shown and depicted on a [sic] official recorded and/or filed map, it is unnecessary and duplicitous [sic] to require a licensed professional to file additional corner records or record of surveys [sic] simply because the monument which was set in the same position is different in nature or contains another land surveyor's license number.

7. Patrick J. Minturn is a licensed land surveyor, a civil engineer, the Director of Public Works for Shasta County, and the Shasta County Land Surveyor. Complainant retained Mr. Minturn as an expert. As Mr. Minturn explained, Business and Professions Code section 8762, subdivision (b)(1),<sup>3</sup> requires that a record must be filed whenever a field survey discloses a "physical change" that does not appear on a recorded map. Mr. Minturn opined that the obliteration of the wooden hubs shown on the 1951 subdivision record and respondent's placing of monuments to re-establish the points marked by those hubs constituted physical changes that required respondent to prepare and file a record of survey

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<sup>2</sup> According to Mr. Wilusz, the three monuments respondent placed ranged from 1.03 to 1.37 feet away from the 2" by 2" wooden hubs shown on the 1951 recorded subdivision map. At hearing, respondent disputed Mr. Wilusz's measurements and asserted that his monuments were in the exact same locations as the 1951 wooden hubs. There was not sufficient evidence to determine whether Mr. Wilusz or respondent was correct. Even if respondent may have placed his monuments in the exact same locations where the wooden hubs had been, this fact is not relevant to whether respondent was required to record a record of survey or corner record when he set his monuments, as explained in Findings 7 and 8 below.

<sup>3</sup> See Legal Conclusion 4 below.

or a corner record. According to Mr. Minturn, respondent's refusal to file any record and his assertion that he was not legally required to do so constituted incompetence in the practice of land surveying.

8. Mr. Minturn's testimony that respondent's placing of monuments to re-establish the points that were previously marked by wooden hubs constituted a "physical change" that required a recording under the Act was persuasive. As set forth in Legal Conclusion 6 below, respondent violated the Act when he set three monuments on the Private Road in Hidden Valley 3 without filing any record with the Placer County Surveyor's Office.

9. While respondent's failure to file any record of the monuments he set violated Business and Professions Code section 8762, subdivision (b)(1), it did not constitute incompetence. The term "incompetence" generally indicates "an absence of qualification, ability or fitness to perform a prescribed duty or function." (*Pollack v. Kinder* (1978) 85 Cal.App.3d 833, 837.) Respondent's failure to file any record of the monuments he set does not show an absence of qualification, ability or fitness to perform a prescribed duty or function. It shows a willful refusal to comply with the law. As such, it is not incompetence.

1760 Blue Ridge Road, Placerville, CA (Lang/Davis Property)

10. Robert Lang owned property located at 1760 Blue Ridge Road, Placerville, California (Lang/Davis Property). In or about 2005, Mr. Lang entered into an agreement to sell the Lang/Davis Property to Kurt Davis. Mr. Lang retained respondent to survey the Lang/Davis Property lines. Mr. Lang paid respondent an \$800 retainer to conduct the survey.

11. Respondent conducted a survey of the Lang/Davis Property. During the survey, respondent set a monument stamped with his license number – LS 3538. According to respondent, he placed this monument to reset a boundary marker, which had previously been moved, back to its original location, as shown on a survey filed in 1978.

12. On March 24, 2005, respondent sent an invoice for \$3,600 to the escrow company handling the sale of the Lang/Davis Property. Respondent's invoice stated the following:

DATE	DESCRIPTION	CHARGE	CREDIT	BALANCE
3/18/05	Locate property corners and lines for Parcel No. 2 ... in El Dorado County, CA	\$4,000.00	\$800.00	\$3,200.00
	Estimated map checking, review, and filing fees to El Dorado Co.	\$ 400.00	-0-	\$3,600.00

13. Respondent was paid \$3,600 from the escrow of the sale of the Lang/Davis Property from Mr. Lang to Mr. Davis.

14. Although respondent conducted a survey, set a monument, and received money from the escrow to reimburse him for his survey and county filing fees, respondent did not file a record of his survey with the El Dorado County Surveyor's Office.

15. On January 19, 2007, Ms. Strubinger wrote a letter to respondent, which she corrected on February 8, 2007. In her corrected letter, Ms. Strubinger informed respondent:

As you have been advised, the setting and/or establishment of points or lines on a property requires the filing of a map pursuant to Section 8762 of the Professional Land Surveyors Act. There is an exemption to the record of survey filing described in Section 8765 that requires only a corner record to be filed for any property corner which is set or reset or found to be of a different character than indicated by prior records. [¶] When a surveyor resets a previously recorded monument and tag[s] the reset monument with his own license number, he or she is required to file a corner record to show that the monument now has a different character from the monument shown on the recorded map. This filing provides identifying information to other surveyors showing the monument is in the same location identified in previous maps.

In her February 8, 2007 corrected letter, Ms. Strubinger gave respondent until February 16, 2007, to submit a response.

16. Respondent submitted a letter dated February 9, 2007, to Ms. Strubinger. In his letter, respondent disputed that he was required to file a record of his survey and included the same language quoted in Finding 6.

17. Mr. Minturn reviewed respondent's actions relating to the Lang/Davis Property. Mr. Minturn opined that respondent's refusal to file a record of survey or corner record constituted incompetence in the practice of land surveying. Business and Professions Code section 8762, subdivision (b)(1), requires that a record of survey must be filed whenever a field survey discloses a physical change that does not appear on a recorded map. According to Mr. Minturn, the disturbance and re-monumentation of property corners were physical changes that required the preparation and filing of a record of survey. Mr. Minturn recognized that an exception set forth in Business and Professions Code section 8765, pursuant to which respondent may have been permitted to file a corner record instead of a record of survey, might apply. Mr. Minturn opined, however, that respondent's insistence that he was not required to file any record indicated a lack of knowledge of the legal requirements respondent is required to follow in discharging his professional duties. According to Mr. Minturn, respondent's lack of knowledge amounts to incompetence.

18. Mr. Minturn also opined that the invoice issued by respondent, as described in Finding 12, represented to Lang and Davis that a record of survey would be filed with El Dorado County. According to Mr. Minturn, respondent's failure to file such a record constituted a misrepresentation in the practice of land surveying.

19. Mr. Minturn's testimony that respondent violated Business and Professions Code sections 8762, subdivision (b)(1), and 8765 by failing to file either a record of survey or a corner record was persuasive. As set forth in Legal Conclusion 8 below, respondent violated the Act when he set a monument on the Lang/Davis Property without filing any record with the El Dorado County Surveyor's Office.

20. The evidence did not, however, establish that respondent was incompetent. Respondent's failure to file any record of the monument he set does not show an absence of qualification, ability or fitness to perform a prescribed duty or function. It shows a willful refusal to comply with the law. As such, it is not incompetence.

21. In addition, respondent's submission of an invoice into the Lang/Davis Property escrow, and his acceptance of \$3,600, including \$400 in filings fees, amounted to a representation that he would file a record of his survey with El Dorado County. Because respondent did not file any record of his survey, the invoice constituted a misrepresentation in the practice of land surveying.

1939 U Street, Rio Linda, CA (Mott Property)

22. Denson and Marlyn Mott own a 6.3-acre parcel of property located at 1939 U Street, Rio Linda, California (Mott Property). On June 4, 2005, the Motts hired respondent to prepare a Tentative Parcel Map to facilitate the splitting of the Mott Property into three parcels. The Motts asked respondent to prepare a map that would be satisfactory to Sacramento County.

23. Respondent did not enter into a written contract with the Motts for the performance of the services they requested. Respondent told the Motts that he needed \$800 to begin the work. The Motts gave him a check for that amount. Respondent also told the Motts that he would keep them informed of any additional costs, but did not otherwise give them an estimate of the total final costs. The Motts informed respondent that they wanted him to prepare the map as quickly as possible, but did not impose a time deadline. Respondent said that he would prepare a map as quickly as he could.

24. Respondent prepared a Tentative Parcel Map dated June 6, 2005, and gave this map to the Motts. The map did not include respondent's stamp or signature. It was submitted to Sacramento County with a completed Planning Department Application Form.

25. Respondent also prepared a topographical map requested by Sacramento County.

26. Sacramento County raised a number of concerns with regard to respondent's Tentative Parcel Map, including that: (1) it did not accurately show the southern boundary line of the Mott Property; (2) it did not properly depict the trees on the property; (3) some of the numbers on the map were smeared; and (4) some of the information on the map was incorrect (e.g., the map stated that the property was zoned AR2, when it was zoned AR5; the map stated that the water district was "suburban water," when it was in the California American District, and the Motts used a domestic well; the map stated that the sewerage disposal was the County of Sacramento, when the property had a septic system). Sacramento County attempted to contact respondent by telephone, but respondent refused to respond to any of the calls, insisting that the county contact him only in writing. When Ms. Mott asked respondent to respond to the county's calls, respondent stated that "the county can't tell me how to survey." Ms. Mott asked respondent on several occasions to do what was necessary to address the county's concerns, but respondent "only wanted to argue" with the county and refused to make the corrections the county requested.

27. When respondent would not respond to the Motts' or the county's concerns, the Motts decided to retain another land surveyor. That land surveyor informed the Motts that he could not take on the project while respondent was still working on it. On January 8, 2007, Ms. Mott wrote a letter to respondent, informing him that they were going to hire another surveyor to complete the project and asking respondent whether they owed him any money.

28. On January 12, 2007, respondent sent a letter to Ms. Mott. In his letter, respondent denied any responsibility for the delay the Motts had incurred in getting their property split. He also informed the Motts that the costs for their project to date were \$1,900 "for the boundary and topo survey" and \$2,400 "for the computer plot, research, and calculations," for a total of \$4,300. In his letter, respondent stated, "This amount must be satisfied before you are eligible to substitute one surveyor for another surveyor." The Motts did not hire respondent to create a computer plot, conduct research or perform calculations. They did not agree in advance that they would pay him \$4,300 for the work they retained him to perform. They did not believe that they owed him that amount since he had not accomplished the task they retained him to perform - to prepare a Tentative Parcel Map that would be satisfactory to Sacramento County.

29. In March 2007, respondent showed up at the Motts house on a Sunday evening uninvited, wanting to discuss the project. Ms. Mott described respondent's conduct as "aggressive, loud and accusatory."

30. Respondent provided the Motts with an invoice that stated:

<b>DATE</b>	<b>DESCRIPTION</b>	<b>CHARGE</b>	<b>CREDIT</b>	<b>BALANCE</b>
3/8/07	Survey and locate prop. cors. and produce Tentative Parcel Map....	\$4,300.00	0.00	\$4,300.00

3/1/07	Late Charge = 2%/mo.			
	on balance	\$ 86.00	0.00	\$4,386.00

Client promised to pay \$1,433.00 per month in February, 2007, until paid in full in April, 2007. As of the above date, nothing has been received.

31. Contrary to the statement included in respondent’s invoice, the Motts did not agree to pay respondent \$1,433 per month in February 2007 or at any other time. By letter dated March 26, 2007, Ms. Mott informed respondent that they were “at a serious impasse regarding [his] services and billing for [their] land split” and that they “strongly disagree[d] with the \$4,300.00 charged for the two maps [they had] received.” According to Ms. Mott’s letter, the “major problem” was that respondent’s Tentative Parcel Map did not show where the southern boundary line of their property was. As Ms. Mott explained, because her “aim was to work with the County to get this project completed we decided to hire someone who could be reached by phone and would talk to [the county] regarding the maps.” To resolve the dispute, Ms. Mott offered respondent an additional \$1,200 to be added to the original \$800, for a total of \$2,000. Respondent did not respond to this letter. The new surveyor that the Motts hired asked respondent for the information respondent had gathered during his work on the project. Respondent refused to provide any information to the new surveyor until the Motts released the claim they had made against him to the Board. The Motts paid the new surveyor approximately \$6,000 to resurvey the property and prepare a Tentative Parcel Map that was satisfactory to Sacramento County.

32. As set forth in Legal Conclusion 3 below, Business and Professions Code section 8759 requires a licensed land surveyor to use a written contract when contracting to provide professional services to a client. Mr. Minturn opined that it is a standard of practice for a competent land surveyor to comply with section 8759 and begin his or her work for a client with a written contract that clearly describes the nature and scope of the services to be rendered. Mr. Minturn opined that respondent violated this standard of practice and was therefore negligent in failing to enter into a written contract with the Motts that clearly described the scope of the work respondent was engaged to perform, the rights of the Motts to his work product, the circumstances under which his services could be terminated, and respondent’s compensation. According to Mr. Minturn, given the Motts’ lack of sophistication with the subdivision process, the absence of a written contract delineating the nature and scope of the services respondent was retained to render was particularly damaging to the Motts.

33. Business and Professions Code section 8761 requires a licensed land surveyor to sign and stamp a tentative parcel map.<sup>4</sup> According to Mr. Minturn, section 8761 sets the

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<sup>4</sup> Business and Professions Code section 8761, in relevant part, provides:

(a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice. All maps, plats, reports, descriptions, or other documents shall be prepared by, or under the responsible charge of

standard that competent licensed land surveyors must follow. Mr. Minturn opined that respondent was negligent in failing to sign and stamp the Motts' Tentative Parcel Map.

34. Mr. Minturn's testimony that respondent violated Business and Professions Code section 8759, by failing to enter into a contract with the Motts, and Business and Professions Code section 8761, by failing to sign and stamp the Tentative Parcel Map, was persuasive. These failure do not, however, constitute "negligence." Land surveyors have "a duty to exercise the ordinary skill and competence of members of their profession, and a failure to discharge that duty will subject them to liability for negligence." (*Bonadiman-McCain, Inc. v. Snow* (1960) 183 Cal.App.2d 58, 70.) The wrongful acts that Mr. Minturn identified do not show that respondent failed to exercise ordinary care and skill in surveying land. Respondent's wrongdoing constitutes violations of explicit provisions of the Act. It does not constitute negligence in the performance of duties relating to the skill and competence of land surveyors.

*Angeli/Schiavo/Santone/Wharff Property (Angeli Property)*

35. Mary and Primo Angeli owned a parcel of property in Placer County, California (Angeli Property). By deed, the Angelis split their parcel into three parcels and granted these three parcels to their three daughters and their spouses – the Wharffs, the Santones and Marlene Angeli/Patrick Schiavo. In June 2001, the Wharffs, the Santones and Angeli/Schiavo retained respondent to survey the Angeli Property, monument the boundaries of the three parcels, and file a record of survey with Placer County. Respondent was paid a \$500 retainer to perform these services. He did not enter into a written contract with the Wharffs, the Santones, and Angeli/Schiavo.

36. Respondent surveyed the Angeli Property, set monuments, and prepared a written record of survey dated October 2001 (2001 Survey). Respondent gave the Wharffs, the Santones, and Angeli/Schiavo a copy of his 2001 Survey and assured them that he would file it with the Placer County Surveyor's Office. On November 13, 2001, the Wharffs, the Santones, and Angeli/Schiavo paid respondent \$5,675. Shortly thereafter, Marlene Angeli contacted respondent. Respondent told her that he had filed his 2001 Survey with Placer County. Respondent's statement to Ms. Angeli was not truthful. Respondent did not file the 2001 Survey with the county.

37. In September 2005, Mr. Wharff retained respondent to reset a corner monument, which respondent had previously set when he conducted his 2001 Survey, but which had since been destroyed or lost. Respondent did not enter into a written contract with Mr. Wharff for this service. Mr. Wharff paid respondent \$570. Although respondent set a

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a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license number. If the document has multiple pages or sheets, the signature, the seal or stamp, date of signing and sealing or stamping, and expiration date of the license shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet.

wooden stake to mark the corner (2005 Survey), he did not file a record of survey or a corner record.

38. In November 2006, respondent was retained to conduct a survey of property adjoining the Angeli Property, which Kelly Groth had purchased (Groth Property). During the course of his survey of the Groth Property, respondent removed monuments that he had set when he conducted his 2001 Survey of the Angeli Property.

39. While he was conducting his survey for Mr. Groth, respondent informed Mr. Wharff that Mr. Groth would offer the Wharffs, the Santones, and Angeli/Schiavo \$100,000 if they would agree to provide Mr. Groth with additional land so that he could subdivide the Groth Property. Respondent also informed Mr. Wharff that if they did not accept Mr. Groth's offer, Mr. Groth would take them to court.

40. After Mr. Wharff told Mr. Schiavo about his discussion with respondent, Mr. Schiavo contacted the Placer County Office of Engineering and Land Surveying and learned that respondent had not filed the 2001 Survey.

41. On November 6, 2006, Mr. Schiavo contacted respondent and respondent admitted that he had not filed the 2001 Survey with Placer County. At no time prior to this admission did respondent inform the Wharffs, the Santones, or Angeli/Schiavo that he had not recorded the 2001 Survey. During the conversation, respondent repeated that Mr. Groth was willing to offer the Wharffs, the Santones, and Angeli/Schiavo \$100,000 for additional land, and that if they did not accept, Mr. Groth would take them to court.

42. In 2007, respondent provided to the Wharffs, the Santones, and Angeli/Schiavo a copy of a new survey that he had prepared (2007 Survey). Respondent's 2007 Survey showed the boundary line between the Angeli Property and the Groth Property to be in a different place from the boundary line shown on respondent's 2001 Survey. By the way respondent drew the boundary line on the 2007 Survey, the size of the Groth property was increased. Based upon this increase, Mr. Groth sought to subdivide the Groth Property into four parcels. If the boundary line had remained as indicated on the 2001 Survey, the Groth property could have been subdivided into only three parcels.

43. After the Wharffs, the Santones, and Angeli/Schiavo rejected Mr. Groth's \$100,000 offer, Mr. Groth sued them. Respondent testified on behalf of Mr. Groth during the hearing in that lawsuit. The court ultimately set the disputed boundary line in the location reflected on respondent's 2001 Survey.

44. Mr. Minturn opined that respondent violated the law and was negligent when he: (1) failed to file the 2001 Survey and the 2005 Survey; (2) failed to execute written contracts with the Wharffs, the Santones, and Angeli/Schiavo for the 2001 Survey and with Mr. Wharff to reset the corner monument in 2005; (3) misrepresented that the 2001 Survey had been recorded with Placer County; and (4) removed some of the monuments that he had previously set when he conducted his 2001 Survey.

45. Mr. Minturn's testimony that respondent violated the law when he engaged in the conduct described in Finding 44 was persuasive. But, for the same reasons set forth in Finding 34, these statutory violations do not constitute negligence.

46. Respondent's misconduct in this case was particularly egregious. Respondent was retained by the Wharffs, the Santones, and Angeli/Schiavo in 2001 to resolve the boundaries of the Angeli property, set monuments, and file a record of survey. Respondent was retained by Mr. Wharff in 2005 to reset a monument. Respondent did not enter into a written contract with either the Wharffs, the Santones, and Angeli/Schiavo in 2001, or with Mr. Wharff in 2005 to document the nature and scope of his retention. Respondent did not file a record of survey in either 2001 or 2005. Respondent's 2001 Survey, 2005 Survey, monuments and stakes were of no value to the Wharffs, the Santones, and Angeli/Schiavo in the absence of recorded surveys. By failing to file the 2001 Survey and the 2005 Survey, respondent deprived the Wharffs, the Santones, and Angeli/Schiavo of any benefit of the surveys they had requested and paid for. Not only did he not file the 2001 Survey, he misrepresented that he had filed it, removed monuments that he had previously set, and prepared a new survey for a neighbor that changed a boundary line to the benefit of that neighbor and the detriment of the Wharffs, the Santones, and Angeli/Schiavo.

#### Vivas/Steele Property

47. James Michael Vivas and Cheryl Young Vivas, as Trustees of the Vivas Family Trust, own two parcels of property known collectively as 9253 Cherry Avenue, Orangevale, California (Vivas Property). Mary Louise Steele, as Successor Trustee of the Steele Family Trust, owns two parcels of property known collectively as 9247 Cherry Avenue (Steele Property). The Vivas Property and the Steele Property share two boundary lines – the northern and eastern boundary lines of the Steele Property. Prior to 2007, the boundary lines between the Steele and Vivas Properties had not been shown on a recorded map.

48. In April 2007, Ms. Steele retained respondent to conduct a boundary survey and set monuments (April 2007 Survey). Respondent conducted a survey and monumented corners with steel stakes (First Stakes). Ms. Steele constructed a stone wall along the northern boundary line between her property and the Vivas property. In August 2007, respondent reset one of the First Stakes approximately 10 feet north (August 2007 Survey). Ms. Steele moved the stone wall north to follow the new boundary line set by respondent.

49. In July 2007, Mr. Vivas constructed a 260-foot redwood fence along the eastern boundary line that respondent had set between the Steele Property and the Vivas Property. Thereafter, respondent set additional steel stakes (Second Stakes) to monument the eastern boundary line. The fence that Mr. Vivas constructed was between the First Stakes and the Second Stakes. Shortly thereafter, respondent removed both the First and the Second Stakes.

50. Respondent did not file a record of survey any of the times he set and reset monuments on or between the Vivas and Steele Properties.

51. Business and Professions Code section 8762, subdivision (c), requires that a record of survey must be filed within 90 days after a field survey has been conducted or monuments have been set. Mr. Minturn opined that respondent violated this section when he did not file a record of survey within 90 days after conducting a field survey and setting monuments on the Steele Property.

While Mr. Minturn explained that a competent surveyor would file a record of survey within the statutory time limit, he recognized that, after completing and filing a survey, a surveyor may discover new information that calls the previous survey into question. According to Mr. Minturn, in such a case, it is the standard of practice for a competent surveyor to prepare and file another record of survey, which shows the previous monuments that the surveyor had set, along with any new monuments, with ties between them. According to Mr. Minturn, a competent land surveyor would show on his new record of survey if the old monuments were to be removed, and would not remove those old monuments until after his new record of survey was filed. Mr. Minturn opined that respondent was negligent when he failed to follow this standard of practice when conducting surveying work for Ms. Steele.

52. Mr. Minturn's testimony was persuasive. Respondent violated the Act and was negligent when he failed to file a record of survey for any of the times he set and reset monuments on or between the Steele and Vivas Properties.

53. At hearing, respondent asserted that he did not set any boundary or corner monuments, but only placed stakes and poles to assist Ms. Steele in constructing her stone wall in a manner that would not encroach on the Vivas Property. According to respondent, Mr. Vivas had no right to rely upon the stakes and poles respondent placed solely for Ms. Steele's benefit when Mr. Vivas constructed his fence. Respondent's assertions were not persuasive. As Mr. Minturn explained, Business and Professions Code section 8762, subdivision (b)(5),<sup>5</sup> requires a licensed land surveyor to file a record of survey whenever he or she conducts a field survey "relating to land boundaries or property lines" and sets points or lines on any parcel described in a deed or other instrument that are not shown on any recorded maps or surveys. In this case, respondent set points relating to land boundaries that were not shown on any recorded maps or surveys. Consequently, pursuant to Business and Professions Code section 8762, subdivision (b)(5), respondent was required to file a record of survey.<sup>6</sup>

#### Prior Disciplinary Action Against Respondent

54. On October 11, 1978, the Board adopted as its decision (1978 Decision) a proposed decision of an administrative law judge. In its 1978 Decision, the Board found that respondent had: (1) commenced a survey for a client, but failed, neglected or refused to

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<sup>5</sup> See Legal Conclusion 4 below.

<sup>6</sup> Ms. Steele was not called as a witness and no evidence was presented relating to any claims she may have made against respondent. Consequently, any allegations in the Accusation charging respondent with wrongful conduct regarding Ms. Steele are dismissed.

complete it in a timely fashion, causing the client to be unable to complete a sale; (2) aided and abetted an individual in the practice of surveying after the Board had prohibited that individual from conducting any surveys for five years; and (3) failed and refused to return the registration certificate of a registered civil engineer after that engineer had terminated his association with respondent. Pursuant to the 1978 Decision, the Board suspended respondent's license for 90 days, effective November 11, 1978.

55. In July 2002, the State Personnel Board (SPB) adopted as its decision (2002 SPB Decision) a proposed decision of an administrative law judge. The 2002 SPB Decision sustained respondent's dismissal from his job as a Transportation Surveyor with the California Department of Transportation (CalTrans) based upon findings that respondent: (1) left discourteous email and voicemail messages for his supervisors and violated CalTrans's workplace violence policy; (2) submitted project binders that contained numerous errors and omissions; and (3) was dishonest on his employment application.

56. In this matter, complainant established by clear and convincing evidence that respondent violated the Act. Respondent did not raise any persuasive or credible defenses to his violations. Respondent's responses to the Board's inquiries (Findings 6 and 16) demonstrate a defiance of the law and the Board's direction and guidance. The Board must have confidence that the land surveyors it licenses understand and follow applicable law. Complainant also established that respondent made misrepresentations to his clients (Findings 21 and 46). Respondent's refusal to follow applicable law and the Board's direction and guidance, when combined with his history of discipline by both the Board and SPB, and the multiple and serious violations established in this case, show that it would not be consistent with the public interest, safety and welfare to allow him to retain his license as a land surveyor.

#### Costs

57. Complainant has requested that respondent be ordered to pay the reasonable costs of investigation and enforcement in the total amount of \$26,665 as follows:

- a. Complainant submitted a Certification of Prosecution Costs: Declaration of Brian S. Turner. Attached to the certification is a Cost-of-Suit Summary and a Matter Time Activity By Professional Type, which describe the tasks performed by the Office of the Attorney General (AGO) in prosecuting this matter, the time spent on each task, and the amount charged. Between May 28, 2008, and July 10, 2009, the AGO expended 131.5 hours working on this matter and charged a total of \$20,945 for this time.
- b. At the hearing, the Deputy Attorney General estimated that he spent an additional eight hours preparing for the hearing after July 10, 2009, which will be charged at \$175 per hour, for a total of \$1,400.

- c. Complainant also submitted a certification of Nancy A. Eissler, Enforcement Program Manager, certifying that complainant had incurred a total of \$4,320 for technical expert costs.

At hearing, respondent asserted that he was not able to pay these costs. According to respondent, he owns only his vehicle and some land surveying equipment. He earns about \$600 a month in consulting fees. He does not own a business anymore. He has only about \$500 in his bank account.

The costs to be assessed in this matter are set forth in Legal Conclusion 19 below.

### LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 8780, the Board may revoke the license of a land surveyor for:

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

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

[¶] ... [¶]

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

[¶] ... [¶]

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

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

2. To “protect and safeguard the health, safety, welfare, and property of the public,” the Board has promulgated a Code of Professional Conduct for land surveyors, which is set forth in California Code of Regulations, title 16, section 476. A violation of the Code of Professional Conduct “in the practice of professional land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to” Business and Professions Code section 8780. (*Ibid.*) California Code of Regulations, title 16, section 476, in relevant part, provides:

(a) Compliance with Laws Applicable to a Project:

A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.

[¶] ... [¶]

(c) Representations:

[¶] ... [¶]

(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope of responsibility in connection with projects or services for which the licensee is receiving or will receive compensation from that client.

[¶] ... [¶]

(7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted land surveying principles.

[¶] ... [¶]

(e) Document Submittal:

[¶] ... [¶]

(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.

3. Business and Professions Code section 8759, subdivision (a), requires a licensed land surveyor to enter into a written contract with a client as follows:

A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her representative, prior to the licensed land surveyor

or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

- (1) A description of the services to be provided to the client by the licensed land surveyor or registered civil engineer.
- (2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.
- (3) The name, address, and license or certificate number of the licensed land surveyor or registered civil engineer, and the name and address of the client.
- (4) A description of the procedure that the licensed land surveyor or registered civil engineer and the client will use to accommodate additional services.
- (5) A description of the procedure to be used by any party to terminate the contract.

4. Business and Professions Code section 8762, in relevant part, requires a land surveyor to file a record of survey as follows:

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material

discrepancy” is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d) (1) If the 90-day time limit contained in subdivision (c) cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

5. Business and Professions Code section 8765, subdivision (d), permits a licensed land surveyor to file a corner record, instead of a record of survey, under the following conditions:

When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

Thacker Property/Hidden Valley 3 Subdivision

6. As set forth in Findings 7 and 8, respondent violated Business and Professions Code section 8762 when he set three monuments on the Private Road in Hidden Valley 3 without filing any record with the Placer County Surveyor's Office. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivision (d), and California Code of Regulations, title 16, section 476, subdivision (a).

Lang/Davis Property

7. As set forth in Finding 21, by his invoice, respondent represented to Mr. Lang and Mr. Davis that he would file a record of his survey with El Dorado County. Because respondent did not file any record of his survey, the invoice constituted a misrepresentation in the practice of land surveying. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivision (a), and California Code of Regulations, title 16, section 476, subdivision (c)(2).

8. As set forth in Findings 17 through 20, respondent failed to file a record of survey regarding his survey of the Lang/Davis Property in violation of Business and Professions Code section 8762. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivision (d), and California Code of Regulations, title 16, section 476, subdivision (a).

Mott Property

9. As set forth in Findings 32 through 34, respondent's failure to enter into a written contract with the Motts violated Business and Professions Code section 8759. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivision (d).

10. As set forth in Findings 32 through 34, respondent's failure to sign and stamp the Motts' Tentative Parcel Map violated Business and Professions Code section 8761. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivision (d).

Angeli Property

11. As set forth in Findings 44 through 46, respondent made misrepresentations to the Wharffs, the Santones, and Angeli/Schiavo in the practice of professional land surveying. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivisions (a) and (d), and California Code of Regulations, title 16, section 476, subdivision (c)(2).

12. As set forth in Findings 44 through 46, respondent failed to file the 2001 Survey, which he conducted for the Wharffs, the Santones, and Angeli/Schiavo, in violation of Business and Professions Code section 8762. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivision (d) and (h), and California Code of Regulations, title 16, section 476, subdivision (a).

13. As set forth in Findings 44 through 46, respondent improperly removed boundary monuments that he previously set on the Angeli Property without following the recording requirements set forth in Business and Professions Code section 8762. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivisions (d), and California Code of Regulations, title 16, section 476, subdivision (a).

14. As set forth in Findings 44 through 46, respondent's failure to file any record of his 2005 Survey for Mr. Wharff violated Business and Professions Code section 8762. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivisions (d), and California Code of Regulations, title 16, section 476, subdivision (a).

Vivas/Steele Property

15. As set forth in Findings 51 through 53, respondent's failure to file a record of survey when he changed the location of a stake monumenting a corner of the Steele Property in August 2007, as required by Business and Professions Code section 8762, constituted negligence. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivisions (b), and California Code of Regulations, title 16, section 476, subdivision (a).

16. As set forth in Findings 51 through 53, respondent's failure to file a record of survey for his April 2007 Survey regarding the boundaries between the Vivas Property and the Steele Property violated Business and Professions Code section 8762. Cause therefore exists to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivisions (d), and California Code of Regulations, title 16, section 476, subdivision (a).

17. As set forth in Findings 51 through 53, respondent's failure to file a record of survey when he changed the location of a stake monumenting a corner of the Steele Property in August 2007 violated Business and Professions Code section 8762. Cause therefore exists

to discipline respondent's license pursuant to Business and Professions Code section 8780, subdivisions (d), and California Code of Regulations, title 16, section 476, subdivision (a).<sup>7</sup>

Other Matters

18. Respondent has engaged in serious misconduct in violation of the Act. His conduct regarding the Angeli Property was particularly egregious. There is no justification for any of the misrepresentations he made to clients.

Respondent has sought to justify his not filing any records of survey or corner records by taking one phrase in Business and Professions Code section 8765, subdivision (d), – “a ‘material discrepancy’ is limited to a material discrepancy in the position of points or lines, or in dimensions” – and reading this phrase out of context to mean that a land surveyor does not have to file any records if the points he places are not materially discrepant to points placed by another surveyor in an earlier survey. (Findings 6 and 16.) Respondent's argument is not consistent with Business and Professions Code sections 6782 and 6785 when these sections are read in their entirety, or with the purpose of the Act. As respondent was repeatedly notified by the Board (Findings 5 and 15), when a surveyor resets a previously recorded monument and tags the reset monument with his own license number, Business and Professions Code sections 6782 and 6785 require the filing of either a record of survey or a corner records to show that the monument now has a different character from the monument shown on the recorded survey. Respondent has chosen not only to ignore the clear language of the Act, but to defy the guidance and direction from the Board.

The matters set forth in Findings 54 through 56 have also been considered. Given respondent's misrepresentations and his refusal to comply with the requirements of the Act, his license must be revoked.

19. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include 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 or her 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 in light of the alleged misconduct.

Complainant seeks \$26,665 in costs. While some of the charges were not proven, respondent was not successful in getting many of the charges dismissed or reduced. Respondent did not make a colorable challenge to the proposed discipline. Respondent did, however, present evidence that he is not able to pay the costs at this time. Given these

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<sup>7</sup> Any cause for disciplinary action alleged in the Second Amended Accusation not expressly found herein is denied.

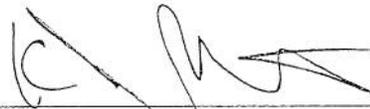
financial factors, the costs are reduced to \$10,000. The Board shall allow respondent to pay these costs over time according to a payment plan acceptable to the Board.

ORDER

1. Land Surveyor License Number L 3538 issued to respondent Patrick Dare Osborne is REVOKED, pursuant to Legal Conclusions 6 through 17, jointly and individually.

2. Respondent shall pay \$10,000 to the Board for its costs of investigation and enforcement. This sum may be paid over time through monthly, semi-annual or annual payments, as determined by the Board or its designee.

DATED: August 19, 2009



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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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8 **BEFORE THE**  
**BOARD OF PROFESSIONAL ENGINEERS AND LANDSURVEYORS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 816-A

12 **PATRICK DARE OSBORNE**  
P.O. Box 6028  
13 Folsom, CA 95763

OAH No. 2008100323

**SECOND AMENDED ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Joanne Arnold (Complainant) brings this Accusation solely in her official  
19 capacity as the Interim Executive Officer of the Board for Professional Engineers and Land  
20 Surveyors, Department of Consumer Affairs.

21 2. On or about December 13, 1968, the Board for Professional Engineers and Land  
22 Surveyors issued Land Surveyor Number L 3538 to Patrick Dare Osborne (Respondent).

23 **JURISDICTION**

24 3. This Accusation is brought before the Board for Professional Engineers and Land  
25 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.

26 All section references are to the Business and Professions Code unless otherwise indicated.

27 ///

28 ///

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

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

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

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

7 "(b) Any negligence or incompetence in his or her practice of land  
surveying

8 "(d) Any violation of any provision of this chapter or of any other law  
relating to or involving the practice of land surveying.

9 "(g) A breach or violation of a contract to provide land surveying  
services.

10 "(h) A violation in the course of the practice of land surveying of a rule  
or regulation of unprofessional conduct adopted by the board.

11 5. Section 8759 provides in relevant part:

12 "(a) A licensed land surveyor or registered civil engineer authorized to  
13 practice land surveying shall use a written contract when contracting to provide  
professional services to a client pursuant to this chapter. The written contract shall  
14 be executed by the licensed land surveyor or registered civil engineer and the client,  
or his or her representative, prior to the licensed land surveyor or registered civil  
15 engineer commencing work, unless the client knowingly states in writing that work  
may be commenced before the contract is executed. The written contract shall  
include, but not be limited to, all of the following:

16 (1) A description of the services to be provided to the client by the  
licensed land surveyor or registered civil engineer.

17 (2) A description of any basis of compensation applicable to the  
contract, and the method of payment agreed upon by the parties.

18 (3) The name, address, and license or certificate number of the licensed  
land surveyor or registered civil engineer, and the name and address of the client.

19 (4) A description of the procedure that the licensed land surveyor or  
registered civil engineer and the client will use to accommodate additional services.

20 (5) A description of the procedure to be used by any party to terminate  
the contract

21  
22 6. Section 8762 (b) provides;

23 (b) Notwithstanding subdivision (a), after making a field survey in  
24 conformity with the practice of land surveying, the licensed land surveyor or  
licensed civil engineer shall file with the county surveyor in the county in which the  
25 field survey was made a record of the survey relating to land boundaries or property  
lines, if the field survey discloses any of the following:

26 (1) Material evidence or physical change, which in whole or in part does  
not appear on any subdivision map, official map, or record of survey previously  
27 recorded or properly filed in the office of the county recorder or county surveying  
department, or map or survey record maintained by the Bureau of Land  
28 Management of the United States.

1 (2) A material discrepancy with the information contained in  
2 any subdivision map, official map, or record of survey previously recorded or filed in  
3 the office of the county recorder or the county surveying department, or any map or  
4 survey record maintained by the Bureau of Land Management of the United States.  
5 For purposes of this subdivision, a "material discrepancy" is limited to a material  
6 discrepancy in the position of points or lines, or in dimensions.

7 (3) Evidence that, by reasonable analysis, might result in materially  
8 alternate positions of lines or points, shown on any subdivision map, official map, or  
9 record of survey previously recorded or filed in the office of the county recorder or  
10 the county surveying department, or any map or survey record maintained by  
11 the Bureau of Land Management of the United States.

12 (4) The establishment of one or more points or lines not shown on any  
13 subdivision map, official map, or record of survey, the positions of which are not  
14 ascertainable from an inspection of the subdivision map, official map, or record of  
15 survey.

16 (5) The points or lines set during the performance of a field survey of  
17 any parcel described in any deed or other instrument of title recorded in the county  
18 recorder's office are not shown on any subdivision map, official map, or record of  
19 survey.

20 7. Title 16 of the California Code of Regulations (hereinafter CCR) Section 476  
21 provides in relevant part:

22 To protect and safeguard the health, safety, welfare, and property of the  
23 public, every person who is licensed by the Board as a professional land surveyor  
24 or civil engineer legally authorized to practice land surveying, shall comply with  
25 this Code of Professional Conduct. A violation of this Code of Professional  
26 Conduct in the practice of professional land surveying constitutes unprofessional  
27 conduct and is grounds for disciplinary action pursuant to Sections 8780 of the  
28 Code. This Code of Professional Conduct shall be used for the sole purpose of  
investigating complaints and making findings thereon under Section 8789.

(a) A licensee shall provide professional services for a project in a  
manner that is consistent with the laws, codes, ordinances, rules and regulations  
applicable to that project.

(c)(2) A licensee shall not misrepresent to a prospective or existing  
client the licensee's scope of responsibility in connection with projects or services  
for which the licensee is receiving or will receive compensation from that client.

(c)(7) A licensee shall only express professional opinions that have a  
basis in fact or experience or accepted land surveying principles.

(e)(2) A licensee shall not misrepresent the completeness of the  
professional documents he or she prepared to his or her client or to other involved  
parties."

8. Section 125.3 of the Code provides, in pertinent part, that the board may request the  
administrative law judge to direct a licensee 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.

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1 California. Respondent knew the express purpose of the survey was to establish the boundary  
2 line for a pending sale of the property to Kurt Davis. Among other things, respondent performed a  
3 survey and placed new boundry monuments. The agreement between respondent and Lang and  
4 Davis specifically contemplated the record of survey would be recorded in the county recorder's  
5 office. Respondent charged for and was paid for recording the survey by Lang and Davis.  
6 Respondent misrepresented to Lang and Davis that a record of survey had been recorded.  
7 Respondent has admitted he did not record the survey and refused to do so.

8 14. Respondent's failure and refusal to record the record of survey as required by the  
9 agreement with Lang and Davis and accepting payment to perform that task constitutes  
10 misrepresentation. Monetary loss occurred to Davis and Lang based on payment to respondent to  
11 record the record of survey and the survey was never recorded.

12 **FOURTH CAUSE OF ACTION**  
13 **(Incompetence; 1760 Blue Ridge Road, Placerville, California)**

14 15. Paragraphs 13 and 14 are incorporated as though set forth at length herein.  
15 Respondent was incompetent within the meaning of section 8780(b) and 16 CCR 476(a) by  
16 failing to record the record of survey as required by section 8762

17 **FIFTH CAUSE OF ACTION**  
18 **(Violation Land Survey Law; 1760 Blue Ridge Road, Placerville, California)**

19 16. Paragraphs 13 and 14 are incorporated herein as though set fourth at length.  
20 Respondent's license is subject to discipline for violating the land survey law as set forth in  
21 sections 8780(d) and (g) and 16 CCR 476(a). The facts and circumstances are as follows:

22 17. Respondent violated section 8762 of the land surveyor law because he failed to record  
23 the record of survey after changing the boundry monuments.

24 **C. MOTT COMPLAINT**  
25 **SIXTH CAUSE OF ACTION**  
26 **(Negligence; Denson And Marilyn Mott)**

27 18. Respondent' license is subject to disciplinary action under sections 8780(b) and 16  
28 CCR 476 (a) and (c)(2) by committing negligence in the practice of professional land surveying.  
The circumstances are as follows:



1 the Motts suffered monetary loss including, but not limited to, excessive fees, delay in processing  
2 their lot split and inability to compare cost of services.

3 **EIGHTH CAUSE OF ACTION**  
4 **(Violation Land Surveyor Law, Motts)**

5 24. Paragraphs 20, 21, and 22 are incorporated herein as though set forth at length.  
6 Respondent is subject to discipline for violating section 8780(d) and (h) and 16 CCR 476 (c)(2)  
7 for failing to have a written agreement with the Motts as required by section 8759. As a result, the  
8 Motts suffered monetary loss including, but no limited to, excessive fees, delay in processing  
9 their lot split and inability to compare fees

10 **NINTH CAUSE OF ACTION**  
11 **(Violation Land Surveyor Law; Dennison And Marilyn Mott)**

12 25. Paragraphs 20, 21 and 22 are incorporated herein as though set forth at length.  
13 Respondent's license is subject to discipline for violating section 8780(d) and (h) and 16 CCR  
14 476 (e)(2) of the land surveyor law because he failed to sign and stamp the map provided to the  
15 Motts. As a result, the Motts incurred excessive fees, delay in the approval of the lot split, and  
16 inability to compare fees.

17 **D. ANGELI COMPLAINT**  
18 **TENTH CAUSE OF ACTION**  
19 **(Misrepresentation; Schiavo, Angeli, Wharff And Santone)**

20 26. Respondent's license is subject to disciplinary action pursuant to section 8780(a) and  
21 (d) and 16 CCR 476 (c)(2), misrepresentation in the practice of professional land surveying. The  
22 circumstances are as follows:

23 27. In or about June of 2001 Respondent performed land surveying services for and on  
24 behalf of property owners Patrick Schiavo/Marlene Angeli, Harry Wharff and Joseph Santone  
25 (hereinafter collectively referred to as owners). The services respondent agreed to perform  
26 included a property survey, monument boundaries, and to record the record of survey. The  
27 purpose of the survey was to place on record the division of one parcel of land into three parcels  
28 of land bequeathed by former owner, Primo Angeli.

///

1 28. Respondent did not have a written agreement with the Owners. Respondent surveyed  
2 the properties and prepared a record of survey. Respondent provided a record of survey to the  
3 owners, but did not record the record of survey with Placer County. Respondent assured the  
4 owners the record of survey had been recorded.

5 29. In or about September 2005, Respondent was hired by owner Wharff for a second  
6 survey to replace one of the markers from the previous survey. Respondent failed to enter a  
7 signed written agreement with owner Wharff. Respondent replaced one of the boundary  
8 monuments but did not record the record of survey.

9 30. In or about November of 2006 Respondent provided surveying services for an  
10 adjoining property owner, Mr. Goth, who intended to subdivide the property. In the course of  
11 performing these services, Respondent moved boundary monuments placed by respondent in the  
12 2001 survey for the owners. When respondent moved the boundry monuments, the property line  
13 changed and Goth obtained real property belonging to the owners. The Goth survey resulted in  
14 litigation between the owners and Goth.

15 31. The actions of respondent caused monetary damage to the owners, including the  
16 potential loss of property and litigation to establish the appropriate property line.

17 **ELEVENTH CAUSE OF ACTION**  
18 **(Negligence 2001 Owners Survey)**

19 32. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
20 Respondent is subject to discipline for violation of section 8780(b) and 16 CCR 476(c)(2) for  
21 failing to enter a written agreement with the owners. The owners sustained monetary loss  
22 because the work performed by respondent did not result in any legal benefit to the owners. The  
23 amounts paid and subsequent litigation were caused in whole or in part by respondent's failure to  
24 provide a written agreement delineating the scope of the services.

25 ///

26 ///

27 ///

28 ///

1 **TWELFTH CAUSE OF ACTION**  
2 **(Violation Land Surveyors Law; Owners)**

3 33. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
4 Respondent's license is subject to discipline for violation of sections 8780(d) and (h) and 16 CCR  
5 476(a). The facts and circumstances are that respondent failed to file the record of survey from  
6 the 2001 survey as required by section 8762. As a result, owners received no benefit from the  
7 survey and consequently were forced into litigation.

8 **THIRTEENTH CAUSE OF ACTION**  
9 **(Breach Of Contract And Violation Land Surveyor Law; Owners)**

10 34. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
11 Respondent's license is subject to discipline for violation of sections 8780(d) and (g) and 16 CCR  
12 476 (a) and (c)(2) by removing the boundary monuments and stakes placed by respondent in the  
13 2001 survey when respondent performed the Goth survey. As a result of respondent's actions, the  
14 owners lost a portion of their real property and were forced into litigation with Goth. The owners  
15 did not receive the benefits for the 2001 survey.

16 **FOURTEETH CAUSE OF ACTION**  
17 **(Negligence; Wharff Survey)**

18 35. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
19 Respondent is subject to discipline for violation of section 8780(b) and 16 CCR 476(c)(2) for  
20 failure to provide a written agreement to owner Wharff for the 2005 survey. Owner Wharff  
21 sustained monetary damage by paying for a survey that was of no benefit and will pay more for a  
22 survey subsequent to the 2005 survey.

23 **FIFTHTEENTH CAUSE OF ACTION**  
24 **(Misrepresentation; Wharff Survey)**

25 36. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
26 Respondent's license is subject to discipline for violation of section 8780(a) and 16 CCR  
27 476(c)(2) for failing to record the record of survey as required by section 8762. As a result owner  
28

1 Wharff sustained monetary injury in that the survey was of no benefit to owner Wharff and it  
2 resulted in litigation subsequent to the Goth survey.

3 **SIXTEENTH CAUSE OF ACTION**  
4 **(Violation Land Surveyor Law; Owner Wharff)**

5 37. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
6 Respondent's license is subject to discipline for violating section 8780(d) and 16 CCR 476(a) and  
7 (c)(2) because respondent failed to file the record of survey as required pursuant to section 8762.  
8 Respondent's violation resulted in monetary damage to owner Wharff because there was no  
9 benefit from the survey.

10 **SEVENTEETH CAUSE OF ACTION**  
11 **(Breach of Contract; Owner Wharff)**

12 38. Paragraphs 28 through 31 are incorporated herein as though set forth at length.  
13 Respondent's license is subject to discipline for violation of section 8780(g) and 16 CCR 476  
14 (c)(2) for breaching the agreement with owner Wharff to record the record of survey from the  
15 2005 survey. As a result of the breach, owner Wharff received no benefit from the survey and  
16 became involved in litigation as a result of the failure to record the survey.

17 **VIVAS COMPLAINT**  
18 **EIGHTEENTH CAUSE OF ACTION**  
19 **(Negligence; Vivas/Steel Property)**

20 39. Respondent's license is subject to disciplinary action for violation of section 8780(b)  
21 and 16 CCR 476 (a), for failing to record a record of survey performed in or about April 2007.

22 The facts and circumstance are as follows:

23 40. In or about April of 2007, James and Cheryl Vivas (Vivas) were the record owners of  
24 property located at 9253 Cherry Ave, Orangevale, California 95662. The Vivas property was  
25 contiguous with property located at 9249 Cherry Ave, Orangevale, California, and owned by  
26 Mary Louise Steele (Steele). Steele contracted with respondent to survey the northern boundary  
27 of the Steele property. Respondent performed the survey and marked the boundary with stakes.  
28 Steele thereafter, in reliance on the stakes, constructed a rock wall separating the Vivas and Steele  
properties.



1 **TWENTY-SECOND CAUSE OF ACTION**  
2 **(Violation Land Surveyor Law; Vivas/Steele)**

3 46 Respondent has subjected his license to disciplinary action for violation of sections  
4 8780(d) and (g) and 16 CCR 476 (a) and (c)(2) by removing surveying monuments after  
5 installation. The facts and circumstances are as follows.

6 47. In or about June of 2008 Vivas informed Steele that Vivas intended to construct a  
7 fence on the property line separating the Vivas west property line from Steele's east property line.  
8 In response, Steele hired respondent to survey the property line. Respondent conducted the  
9 survey and installed boundary monuments on the north and south end of the property line. In  
10 reliance on these monuments, Vivas constructed a wood fence approximately 260' in length. On  
11 or about August 24, 2007, respondent entered on Vivas property and removed the north corner  
12 marker, and then informed Vivas the fence was on the wrong side of the line. When Vivas  
13 instructed respondent to leave the property, respondent asked Vivas to follow him and engage in a  
14 fist fight. Respondent caused monetary loss to Vivas by a fence constructed in the incorrect  
15 location.

16 **TWENTY-THRID CAUSE OF ACTION**  
17 **(Breach Of Contract, Vivas/Steele Complaint)**

18 48. Paragraphs 46 and 47 are incorporated herein as though set forth at length.  
19 Respondent has subjected his license to discipline by violating section 8780(g) and 16 CCR 476  
20 (c)(2) by removing the stake on the north edge of the property line on or about August 24, 2008.  
21 Steele did not receive the benefit of the survey services when no property line was established.

22 **DISCIPLINE CONSIDERATIONS**

23 49. To determine the degree of discipline, if any, to be imposed on Respondent,  
24 Complainant alleges that on or about September 19, 1978, in a prior disciplinary action entitled *In*  
25 *the Matter of the Accusation Against Patrick Dare Osborne* before the Board for Professional  
26 Engineers and Land Surveyors, in Case Number N-11529, Respondent's license was suspended  
27 for professional misconduct in abandoning a client, incompetence, and aiding and abetting the  
28 ///

1 unlicensed practice of land surveying. That decision is now final and is incorporated by reference  
2 as if fully set forth.

3 50. As a further basis to determine the degree of discipline, if any, to be imposed on  
4 Respondent, Complainant alleges Respondent engaged in professional misconduct that was part  
5 of the basis of his dismissal from Cal Trans. The appeal of the dismissal *In the Matter of the*  
6 *Appeal by Patrick Osborne*, finalized July 2, 2002, included findings by the Administrative Law  
7 Judge that the Respondent had incompetently performed a basic function of a Cal Trans associate  
8 land surveyor: the creation of survey binders for three projects. The basis of the dismissal  
9 included Respondent's violation of Cal Trans sexual harassment policies and work place violence  
10 policies. As further basis for the dismissal, the judge found that Respondent had lied on his  
11 employment application about Respondent's educational background concluding the  
12 Respondent's conduct equated to fraud in securing appointment.

13 **PRAYER**

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

- 17 1. Revoking or suspending Land Surveyor Number L 3538, issued to Patrick Dare  
18 Osborne;
- 19 2. Ordering Patrick Dare Osborne to pay the Board for Professional Engineers and Land  
20 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to  
21 Business and Professions Code section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23 Dated: May 22, 2009

24   
25 \_\_\_\_\_  
26 JOANNE ARNOLD, Interim Executive Officer  
27 Board for Professional Engineers and Land Surveyors  
28 Department of Consumer Affairs, State of California  
Complainant

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