Overview of Current Law Enforcement Issues
2013 Conference
Professional Land Surveyors of Oregon
Friday, January 25, 2013 – Salem Conference Center
OSBEELS Investigators

Purpose of Presentation
- Outline powers and duties of OSBEELS, the Law Enforcement Committee (LEC), and the Regulation Department
- Chart investigation and hearing procedures
- Identify grounds for disciplinary action
- Review types of disciplinary actions
- Discuss trouble spots for compliance
- Hold question and answer session

Organizational Info
Standing Committees
- Examinations & Qualifications
- External Relations
- Finance
- Law Enforcement
- Professional Practices
- Rules & Regulations

Overview Complaint Process
- Complaint received
- Conduct preliminary evaluation and/or open case
- Respondent has 14-days to respond to allegations
- LEC reviews determine issue is not a Notice of Intent (NOI)
- Respondent has 21-days to respond to NOI
- Conduct Informal Conference or hearing with OAH/ALJ
- Board approves Final Order listing violation and sanction

Complaint Process Begins
- Board generates complaint
- Complaint received
- Staff conducts preliminary review
- Staff determines if complaint should be investigated
- Staff investigates and prepares report
- Board of Citizenship
- Further investigation
- Board of Citizenship considers staff investigation summary and makes recommendation to the Board
- Board recommends

Trouble Spot 1: CPD

- Continuing Professional Development (CPD) requirements ensure that professional engineers, land surveyors, and photogrammetrists, and certified water right examiners sustain continuing competency.
- OAR 820-010-0635 requires every registrant to obtain 30 professional development hour (PDH) units during each biennial renewal schedule:
  - Submit your CPD Organizational Form with payment
  - Keep a copy of the form for your records
  - Delinquent payment or lack of Form will delay renewal
  - Not authorized to offer professional practices
  - Retain 5-years of supporting documentation
  - Submit documentation only in response to an audit

CPD Audit Success 1

- First and foremost: respond to audit letters.
- Keep current your CPD form and documentation.
- Ensure your CPD Organizational Form listings match supporting documentation.
- Securely file your supporting documentation.
- Certifying course you did not take means you submitted false documentation to the Board.
- Reconstructing your documentation means you have not maintained them and are in violation.
- Retire your registration if you are not staying current on CPD requirements.

CPD Audit Success 2

- If you are audited, do not rely on a friend to give you the correct information to comply with a CPD Audit!
- Utilize Board staff to assist you if you do not understand what is required when you receive an audit notice.
- Questions?
  - Contact OSBEELS Account Specialists
  - Tina Sorensen, Amelia Volker
  - 503-362-2666
- It is too late to avoid a likely sanction if your file is transferred to the Regulation Department for investigation.
Trouble Spot 2: Titles

ORS 672.007, Acts constituting practice of engineering, land surveying or photogrammetric mapping. For purposes of ORS 672.002 to 672.325, ***

(2) A person is practicing or offering to practice land surveying if the person:
(a) By verbal claim, sign, advertisement, letterhead, card or in any other way implies that the person is or purports to be a land surveyor;
(b) Through the use of some other title implies that the person is a land surveyor; or
(c) Purports to be able to perform, or who does perform, any land surveying service or work or any other service that is defined by ORS 672.005 as the practice of land surveying. ***

Complying with Titles

  - The Survey discussed salaries and benefits for individuals with the title of "engineer," but who were not required to be OSBEELS registered.
  - Under ORS 672.007(3), use of the title is defined as engineering. Unlicensed persons are violating ORS 672.045.
  - The Board sent ACIC a letter on December 11, 2011, asking them to consider information published in the Benefits Survey regarding the use of "engineer" title by unlicensed persons in member firms.
  - The Board has issued sanctions in such cases.
- This issue applies to surveyors and surveying firms as well.
  - Ensure that only licensed persons have the title of "land surveyor," "professional land surveyor," or "registered professional land surveyor."

What is Prohibited?

ORS 672.045(A)(B) prohibits activities relating to practice of engineering, land surveying or photogrammetric mapping.

- (1) Any person prohibited from practicing land surveying or photogrammetric mapping without having a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
- (2) Any person prohibited from practicing land surveying or photogrammetric mapping without a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
- (3) Any person prohibited from practicing land surveying or photogrammetric mapping without a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
- (4) Any person prohibited from practicing land surveying or photogrammetric mapping without a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
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- (9) Any person prohibited from practicing land surveying or photogrammetric mapping without a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
- (10) Any person prohibited from practicing land surveying or photogrammetric mapping without a valid certificate or permit to so practice issued in accordance with ORS 672.002 to 672.325.
ORS 672.005(2): Surveying

ORS 672.005, Additional definitions. As used in ORS 672.005 to 672.325 and unless the context requires otherwise, "surveying" means, in any of the following:
(a) Providing or offering to provide professional services that apply mathematics, geography and other sciences and methods.
(b) The making of geometric measurements and the gathering of related information in connection with:
- The physical or legal features of the earth;
- Improvements on the earth; or
- The space above or below the earth;
(c) The development of measurements and information described in subparagraphs (a) and (b) of this paragraph in geographic, topographic, plan, plume, surface, dimension, property or similar surveys;
(d) Establishing, reestablishing or replacing boundaries or geodetic control measurements or reference points;
(e) Collecting, preparing, manipulating or maintaining related to activities described in paragraph (c) of this subsection, other than surveying as a science;
(f) Collecting, preparing, manipulating or maintaining related to activities described in paragraphs (a) to (d) of this subsection, other than surveying as a science.
(g) Making surveys that involve horizontal or vertical mapping control or geodetic control.

ORS 672.025(3): Surveying

ORS 672.025, Practice of land surveying without registration prohibited; seal required.
1. No person shall practice land surveying in this state unless the person is registered and has a valid certificate to practice land surveying issued under ORS 672.005 to 672.325.
2. Every registered professional land surveyor shall, upon registration, obtain a seal of the design authorized by the State Board of Examiners for Engineering and Land Surveying. Every final document including drawings, specifications, design, reports, narratives, maps and slams issued by a registrant shall be stamped with the seal of and signed by the registrant. The signature and stamp of a registrant constitute a certification that the document was prepared by the registrant or under the registrant’s supervision and control.
3. Notwithstanding the provisions of ORS 672.025(3), a registered professional engineer not also registered as a professional land surveyor shall not establish, reestablish or restore land boundaries, corners or monuments between lands not held in common ownership or intended for conveyance.

Trouble Spot 3: PLS/PE

- Engineers are authorized to engage in specific acts of land surveying defined under ORS 672.005(1)(c-g).
- Determine area or topography.
- Establish lines, grades or elevations, or to determine or estimate quantities of materials required, removed or in place.
- Surveying required for design and construction layout of engineering and architectural infrastructure.
- Engineers are not authorized to engage in land surveying that involves boundaries as per ORS 672.025(3).
- Accurately represent the professional services of your registration to the public, to your peers, and to contracting agencies.
Offering Services

OAR 520-010-0720, Advertising for or Offering to Perform Services without Employing a Licensee, Engineering, Land Surveying, and Photogrammetry Offices

1. A licensee or firm, partnership, corporation, limited liability company, joint stock company, or other organization shall not advertise for or offer to perform professional services for which a license is required unless the licensee or organization has a full-time partner, manager, officer, or employee licensed to practice in the discipline for which a license is required.

Trouble Spot 4: Entry

ORS 622.047, Right of entry by land surveyor, compensation for damages caused; notice; removal of survey markers.

1. Subject to subsection (b) of this section, a registered professional land surveyor, or any employee or agent of the land surveyor, may enter upon land, where practicable, upon any land for the purpose of surveying or performing any survey work and may establish permanent survey monuments as allowed by rules of the State Board of Examiners for Engineering and Land Surveying.

2. A registered professional land surveyor, or any employee or agent of the land surveyor, may not enter upon land for the purpose of surveying, performing, or survey work or establishing permanent survey monuments without first providing notice to the landowner by first-class mail or by personal notice. If the land is occupied by a person other than the landowner, notice must also be given to the occupant by first-class mail or by personal notice. Notice that is given by first-class mail must be mailed at least seven days prior to the entry onto the land. Notice that is given by personal notice must be hand-delivered to the landowner or occupant or be posted in a conspicuous place where the landowner or occupant will reasonably be expected to see the notice. The notice shall give the professional land surveyor’s name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers to be left on the land.

Right of Entry Success

ORS 622.047 gives professional land surveyors the exclusive right to enter private lands upon proper notice. The process must:

- First provide notice to the landowner by first-class mail or by personal notice. If the land is occupied by a person other than the landowner, notice must also be given to the occupant by first-class mail or by personal notice.
- Notice that is given by first-class mail must be mailed at least seven days prior to the entry onto the land. Notice that is given by personal notice must be hand-delivered to the landowner or occupant or be posted in a conspicuous place where the landowner or occupant may reasonably be expected to see the notice.
- The notice shall give the professional land surveyor’s name, address, telephone number, purpose, availability of the survey and the presence of any temporary or permanent monuments or other markers to be left on the land.
Basis for Legal Action

OES 672-200, Grounds for suspension or revocation of certificate or permit or refusal to issue, restore or renew certificate or permit; grounds for reprimand. The State Board of Examiners for Engineering and Land Surveying may refuse to issue, restore or renew, or may suspend or revoke a certificate or permit, or reprimand any individual enrolled as an intern or holding a certificate or permit:
1. For violation of any provision of OES 672-045;
2. For gross negligence, negligence or incompetence in the practice of engineering, land surveying or photogrammetric mapping;
3. For conviction of a felony, or of a misdemeanor involving the practice of engineering, land surveying or photogrammetric mapping; or
4. For any violation of the rules of professional conduct prescribed by the board.

OAR: Rules of Conduct

OAR 820-020-0005, Preamble
OAR 820-020-0015, Registrants Shall Hold Paramount the Safety, Health and Welfare of the Public in the Performance of their Professional Duties
OAR 820-020-0020, Registrants Shall Perform Services Only in the Areas of Their Competence
OAR 820-020-0025, Obligation of Registrants to Issue Statements only in an Objective and Truthful Manner
OAR 820-020-0030, Obligation of Registrants to Act in Professional Matters for Each Employer or Client as Faithful Agents or Trustees, and to Avoid Conflicts of Interest
OAR 820-020-0035, Obligation of Registrants to Avoid Improper Solicitation of Professional Employment
OAR 820-020-0040, Examination Subversion
OAR 820-020-0045, Obligation Not to Engage in Unprofessional Behavior

Finding OSBEELS

www.oregon.gov/OSBEELS
Contact OSBEELS

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503-362-2666
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