

**STATE OF MINNESOTA
BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN**

**In the matter of John Bieniek
PROFESSIONAL ENGINEER
License Number 23084**

STIPULATION AND ORDER

Board File No. 2015-0030

TO: John Bieniek
6421 Barclay Avenue
Inver Grove Heights, Minnesota 55077

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2014) and Minnesota Statutes section 326.111 (2014) to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning John Bieniek ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that these matters may now be resolved by this Stipulation and Order.

STIPULATION

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. Respondent was first issued a Professional Engineer license by the Board on February 7, 1994. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation.

2. Facts. This Stipulation is based upon the following facts:
- a. Respondent was first licensed as a Professional Engineer in the State of Minnesota on February 7, 1994.
 - b. On July 1, 2014, Respondent's Minnesota Professional Engineer license in the State of Minnesota expired.
 - c. Respondent reinstated his Minnesota Professional Engineer license on December 18, 2014. Respondent's license status is current with an expiration date of June 30, 2016.
 - d. Respondent's Minnesota Professional Engineer license lapsed from July 1, 2014 to December 18, 2014.
 - e. In a letter dated March 2, 2015, Respondent stated that the signature block used on emails during the lapse of his license, he used the title "John Bieniek, P.E., PTOE." Respondent held himself out as a Professional Engineer (PE) during the lapse of his Minnesota license from July 1, 2014 to December 18, 2014, on his emails by using the title of "P.E." in the signature block.
 - f. Attached to the letter dated March 2, 2015, was a copy of Respondent's position description identified as attachment 'H.' Respondent's position description stated he was with the Minnesota Department of Transportation, with a working title of 'Maintenance Operations Engineer.' Respondent held this position during the lapse of his Minnesota license from July 1, 2014 to December 18, 2014. Under the KNOWLEDGE, SKILLS AND ABILITIES in the position description, one of the requirements stated: "The

position requires registration as a Licensed Professional Engineer in the State of Minnesota.”

g. In this same letter dated March 2, 2015, Respondent stated: “I do have a specific role in the development of Minnesota projects involving plan layout reviews.” “My role in this process is to provide the sign-off for the Maintenance area to indicate that a review was offered by Design and provided by Maintenance.” “I sign these layouts with my job title Maintenance Operations Engineer.” “During the time period of the license lapse I estimate that I would have signed about 15 layouts.” Respondent practiced as a Minnesota Professional Engineer when he signed the layout reviews as the Maintenance Operations Engineer on approximately 15 layout reviews during the lapse of his Minnesota license from July 1, 2014 to December 18, 2014.

h. Attached to the letter dated March 2, 2015, was a copy of the Respondent’s ‘Professional Traffic Operations Engineer’ certificate renewal identified as attachment ‘F.’ On this ‘Professional Traffic Operations Engineer’ certificate renewal, directly above Respondent’s signature was a statement that stated: “I certify that I have a current professional engineering license and that my professional engineering license, membership in a professional society, or employment or engagement as a professional engineer has not been suspended nor terminated for unethical or illegal actions since your initial date of certification as a PTOE.” The certificate renewal was signed by the Respondent on October 20, 2014. Respondent held himself out as a Minnesota Professional Engineer on October 20, 2014 as his license was expired.

i. Based upon the ESSENTIAL JOB FUNCTIONS as the Minnesota Department of Transportation, Maintenance Operations Engineer, as stated in the official position description, Respondent practiced "professional engineering," within the meaning of Minnesota Statutes section 326.02, subdivision 3, when he held the position of Maintenance Operations Engineer for the Minnesota Department of Transportation without a current Minnesota Professional Engineer license from July 1, 2014 to December 18, 2014.

j. Respondent stated that the occurrence of the lapse of his Minnesota Professional Engineer license was unintentional, inadvertent and without intent to be deceptive or dishonest.

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02, subdivisions 1 and 3, and Minnesota Statutes section 326.03, subdivision 1 (2014) and are sufficient grounds for the action specified below. Specifically, it is alleged that the Respondent held himself out as a Professional Engineer in Minnesota without a license, within the meaning of Minnesota Statutes section 326.02, subdivision 1 (2014), during the lapse of his Minnesota Professional Engineer license, between July 1, 2014, to December 18, 2014, (a) on emails during the lapse by using the title "P.E.," and (b) on his 'Professional Traffic Operations Engineer' certificate renewal by certifying that he had a current professional engineering license. It is specifically further alleged that Respondent practiced professional engineering, as defined in Minnesota Statutes section 326.02, subdivision 3 (2014), during the lapse of his Minnesota Professional Engineer license, between July 1, 2014, to December 18, 2014, (a) by signing approximately 15 layout reviews as the

Maintenance Operations Engineer for the Minnesota Department of Transportation, and (b) based upon the requirement of licensure as a Professional Engineer in Minnesota listed in the ESSENTIAL JOB FUNCTIONS as the Minnesota Department of Transportation, Maintenance Operations Engineer.

4. Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

a. Reprimand. Respondent is reprimanded for the foregoing conduct.

b. Civil Penalty. Respondent shall pay to the Board a civil penalty of Five Thousand Dollars (\$5,000.00). Respondent shall submit a civil penalty of Five Thousand Dollars (\$5,000.00) by check or money order to the Board within sixty (60) days of the Board's approval of this Stipulation and Order.

c. Respondent shall cease and desist from violating any laws, rules or orders entrusted to enforcement by the Board.

5. Waiver of Respondent's Rights. For the purpose of this Stipulation, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2014), and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or

otherwise.

6. Collection. Pursuant to Minnesota Statutes section 16D.17 (2014), after ninety (90) days of the Board's approval of this Stipulation and Order, the Board may file and enforce any unpaid portion of the civil penalty imposed by this Order as a judgment against Respondent in district court without further notice or additional proceedings.

7. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2014), Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Stipulation and the record.

8. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

9. Record. The Stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Stipulation.

10. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2014). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2014). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of engineering.

11. Entire Agreement. Respondent has read, understood, and agreed to this Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

12. Counsel. Respondent is aware that he may choose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.

13. Service. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

John Bieniek
John Bieniek

Dated: JULY 22, 20 15

SUBSCRIBED and sworn to before me on
this the 22 day of July, 20 15

Karen M Malecha
(Notary Public)

My Commission Expires:
Jan 31 2020



COMPLAINT COMMITTEE

Terry Groshong
TERRY GROSHONG, AR
Committee Chair

Dated: 8/5, 20 15

ORDER

Upon consideration of the foregoing Stipulation and Order and based upon all
the files, records, and proceedings herein, all terms of the Stipulation and Order are
approved and adopted and hereby issued as an Order of this Board this the 6 day
of AUGUST, 20 15.

MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE AND
INTERIOR DESIGN

By: Mary Deeg
MARY DEEG, CID
Board Chair

AFFIDAVIT OF SERVICE BY MAIL

RE: In the matter of John Bieniek
PROFESSIONAL ENGINEER
License Number 23084

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Lynette DuFresne, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 10th day of AUGUST, 2015, she served the attached **Stipulation and Order**, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:

Mr. John Bieniek
6421 Barclay Avenue
Inver Grove Heights, Minnesota 55077

CERTIFIED MAIL
Return Receipt Requested
7006 0810 0006 3219 5411



Lynette DuFresne

Subscribed and sworn to before me on
this the 10th day of August, 2015.



(Notary Public)

