

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

In the Matter of the Professional Engineer  
License of Brian D. Smith

**ORDER GRANTING  
SUMMARY DISPOSITION**

The above-entitled matter came before the Minnesota Board of Architecture, Engineering, Land Surveying Landscape Architecture, Geoscience and Interior Design on March 12, 2020.

On October 10, 2019, the Complaint Committee moved Administrative Law Judge Eric Lipman for summary disposition concerning whether Respondent Brian D. Smith (1) failed to obtain the requisite number of professional development hours (PDH) before he renewed his license in April 2018 and (2) engaged in fraudulent or deceptive practices when he falsely certified compliance with the statutory PDH requirements. Smith did not submit a written response to the Committee's motion, but telephonically appeared at the November 12 motion hearing to contest that discipline should be imposed based on the undisputed facts. On December 16, the ALJ recommended granting-in-part and denying-in-part the Committee's motion and forwarded the matter to the Board for a final order. On January 6, the Board informed the parties of their right to file exceptions and argument to the ALJ's recommendation pursuant to Minn. Stat. § 14.61, subd. 1 (2018). On February 10, the Committee filed arguments and exceptions with the Board. Smith did not file any arguments or exceptions to the ALJ's recommendation. The record closed that day.

Based on all the facts, records, and proceedings herein, the Board makes the following:

### **FINDINGS OF FACT**

1. The Board issued Smith a professional engineer license in July 1999. His license is currently set to expire on June 30, 2020. Johnson Aff. ¶ 3.

2. On April 30, 2018, Smith applied to renew his license by completing an online renewal application. *Id.* ¶ 4, Exs. A-B.

3. On his renewal application, Smith certified that he had completed 132 hours of professional development at the time of his application. *Id.* ¶ 5. To complete the online renewal application, Smith was required to check a box to swear or affirm that he had read the renewal application and continuing education reporting screens and that the information he reported was true and complete. *Id.* Ex. B at OAH 26.

4. The Board renewed Smith's license based on the representations set forth in his application. *Id.* ¶ 6.

5. In May, the Board randomly selected Smith for a PDH audit and sent him a letter requesting documentation supporting the hours he certified on his renewal application. *Id.* ¶ 7, Ex. C. After Smith did not respond to the Board's initial letter, the Board sent a follow up letter on June 7. *Id.* ¶ 8, Ex. D.

6. On June 26, Smith, through his secretary, provided documentation conceding that he had only completed 13.25 PDH when he renewed his license, substantially less than the 24 PDH required by Minn. Stat. § 326.107, subd. 1(b). *Id.* ¶ 9, Ex. E. Smith further reported that, after he was notified about the Board's audit, he completed an additional 21 PDH on June 24 to cure the deficiency. *Id.* ¶ 9, Ex. E.

## CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board makes the following conclusions of law:

1. Smith received due and proper notice of the contested case proceeding and the Committee's summary disposition motion.

2. "Summary disposition is the administrative equivalent of summary judgment." *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004). The purpose of summary judgment is to secure "a just, speedy, and inexpensive determination of an action." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Summary judgment must be granted if there is "no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts." *Id.*; Minn. R. Civ. P. 56.03.

3. The Committee met its initial burden of establishing that no genuine issues of material fact existed. *See* Minn. R. Civ. P. 56.01; *see also Anderson v. Dep't of Nat. Res.*, 693 N.W.2d 181, 191 (Minn. 2005). Despite being afforded notice and opportunity to contest the Committee's motion, Smith did not submit a sworn affidavit or a document that was signed under penalty of perjury pursuant to Minn. Stat. § 358.116 (2018) to contest any facts asserted by the Committee. Smith further orally acknowledged during the motion hearing before the ALJ that he was not contesting any facts and, instead, merely disputed that any discipline should be imposed under the circumstances.

4. The Board adopts the ALJ's analysis that it is not a defense that Smith's secretary allegedly submitted the false application on his behalf and that he allegedly was unaware of the false submission.

5. The Committee established that Smith renewed his license in April 2018 without earning a minimum of 24 PDH prior to biennial renewal in violation of Minn. Stat. §§ 326.107, subd. 1(a)-(b), .111, subd. 4(a)(8) (2018).

6. The Board rejects the ALJ's conclusion that the Committee did not establish that Smith employed fraud when he falsely certified that he had completed at least 24 PDH upon renewing his license. The Board further concludes that Smith engaged in deceptive or dishonest conduct and made a material misrepresentation to the Board when he certified his compliance with PDH requirements when, in fact, he was out of compliance at the time he renewed his license in violation of Minn. Stat. § 326.111, subd. 4(a)(5), Minn. R. 1805, subd. 4C.

7. This order is in the public interest.

#### **ORDER**

Pursuant to Minn. Stat. § 326.111, subd. 4(a) (2018), Smith is censured and reprimanded.

Pursuant to Minn. Stat. § 326.111, subd. 6(a), Smith, shall pay a civil penalty of \$2,000 to the State of Minnesota.

Pursuant to Minn. Stat. § 16D.17(1) (2018), Smith is notified that this shall become a final civil penalty unless he requests a hearing from the Board on the civil penalty within thirty days. Pursuant to Minn. Stat. § 16D.17(2) (2018), Smith is notified that when the civil penalty becomes final, the Board may file and enforce the civil penalty in the same manner as a district court judgment against him without further notice or additional proceedings. Smith is notified that simple interest computed in accordance with Minn. Stat. § 16D.13 (2018), shall begin to accrue on the civil penalty thirty days after the date of this order.

Dated: March 12, 2020

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

A handwritten signature in black ink, appearing to read "Margaret Parsons", written over a horizontal line.

Margaret Parsons, Chair

## MEMORANDUM

The Minnesota Legislature established that engineers licensed by the Board must complete a minimum of 24 PDH prior to renewing his or her license. The PDH requirement protects the public health, safety, and welfare by requiring engineers to continue to receive instruction in the profession.

Smith only had 13.25 PDH when he renewed his license in April 2018. Nevertheless, Smith certified that he had read and complied with the PDH requirements and that all information he submitted to the Board in his renewal application—including that he had completed 132 PDH—was true and accurate. Significantly, Smith had not completed the minimum 24 PDH required by Minnesota law when he renewed his license and his attestation that he had done so was false.

The Board rejects the ALJ's analysis concerning Smith's fraudulent and deceptive practices for several reasons. First, the recommendation appeared to credit Smith's oral legal argument with factual weight by noting that "Smith vigorously disputes the Committee's claim that the inaccurate data was submitted to Board with the knowledge that it was false." OAH 8. If Smith wished to raise or dispute issues of fact, he should have submitted an affidavit or an admissible declaration. He did not. Second, the recommendation appeared to interpret the Committee's allegations to be limited to the excessive amount of PDH that Smith over-reported to the Board. OAH 7. Smith's misconduct encompassed the false certification that Smith made affirming that he was in compliance with the PDH requirement when he was not. Indeed, this is not a case where Smith had complied with the minimum PDH at the time of renewal and merely reported an incorrect number of hours through a clerical error. Lastly, the recommendation suggested that the Committee failed to establish that Smith intended to deceive the Board.

OAH 8. But intent to defraud is not necessarily an element of fraud in this context. An affirmation of knowledge is sufficient to establish fraud when the statement is untrue or the speaker does not know whether the statement is true or false. *See, e.g., In re Perron*, 437 N.W.2d 92, 96 (Minn. Ct. App. 1989). Here, it is undisputed that Smith only had 13.25 PDH when he falsely certified that he complied with the minimum 24 PDH requirement.

More than censure or reprimand are necessary in this instance to protect the public interest and to achieve a deterrent effect upon others. The Board has the authority to impose a civil penalty up to \$10,000 per violation. Minn. Stat. § 326.111, subd. 6. The factors the Board must consider in assessing fines are set forth in Minn. Stat. § 14.045, subd. 3 (2018). Even though Smith violated multiple laws, the Board considers this misconduct to be one violation because it was a discrete act. The Board recognizes that this was Smith's first violation, that he promptly cured his deficient PDH after receiving notice of the Board's audit, and that there was scant economic harm caused by Smith's violation. Offsetting these factors is that the Board discovered this misconduct through an audit. Smith's insistence that the Committee should have dismissed its case after he cured his PDH deficiency would not provide any deterrent to Smith or other licensees who may be tempted to make similar false affirmations in the future. Likewise, Smith's claim that this action is unwarranted does not instill confidence that he accepted responsibility for his violation and will endeavor to ensure PDH compliance going forward.

Based on these considerations, the Board believes that a \$2,000 is appropriate under these circumstances.

## AFFIDAVIT OF SERVICE BY MAIL

RE: In the Matter of the Professional Engineer License of Brian D. Smith  
OAH 8-1006-36222

STATE OF MINNESOTA     )  
                                      ) ss.  
COUNTY OF RAMSEY     )

Kathryn Weiss, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 13<sup>th</sup> day of March, 2020, she served the attached **ORDER GRANTING SUMMARY DISPOSITION** by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with postage prepaid, and addressed to:

Brian Smith  
1693 S. Coronado Ave.  
Boise, Idaho 83709

Allen Barr  
Assistant Attorney General  
Minnesota Attorney General's Office  
445 Minnesota Street, Ste. 1400  
St. Paul, Minnesota 55101

Kathryn A. Weiss  
Kathryn Weiss

Subscribed and sworn to before me on  
this the 13<sup>th</sup> day of March, 2020.

Victoria E. Oehrlein  
(Notary Public)

