

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS

AND LAND SURVEYORS

STATE OF MONTANA

_____)	Docket No. CC-01-310-PEL
IN THE MATTER OF THE PROPOSED)	Hearings Bureau Case No. 2492-2001
DISCIPLINARY TREATMENT OF THE)	
LICENSE OF RALPH SCHNORR)	FINDINGS OF FACT;
License # 4952P.E.)	CONCLUSIONS OF LAW;
_____)	AND PROPOSED ORDER

INTRODUCTION

The Department of Labor and Industry (hereinafter Department) seeks to impose sanctions against Ralph Schnorr's (hereinafter Licensee) professional engineer's license, License #4952 P.E., issued by the Montana Board of Professional Engineers and Land Surveyors. A contested hearing was held in this matter on September 10, 2002. John Atkins, agency legal counsel, appeared on behalf of the Department. William Driscoll, attorney at law, appeared on behalf of the Licensee. The Department offered into evidence Exhibits 1, 1a, 1b, 1c, and 2. Licensee's counsel stipulated to admission of Exhibits 1, 1a, 1b, and 1c. Licensee's counsel objected to the admission of Exhibit 2 on the basis that it was not timely disclosed. That objection was overruled for the reasons stated **in the record**. The parties then submitted the matter to the hearing examiner for determination. Based on the evidence and arguments adduced at the hearing in this matter, the hearing examiner makes the following findings of fact, conclusions of law, and proposed order recommending revocation of the Licensee's professional engineering license.

FINDINGS OF FACT

1. At all times pertinent to this matter, the Licensee has held a professional engineer's license issued by the Montana Board of Professional Engineers and Land Surveyors, License #4952 P.E.
2. The Licensee also held a professional engineer's license, P.E. #2730, in the state of South Dakota issued by the South Dakota Board of Technical Professions.
3. As demonstrated by Exhibit 1, 1a, 1b, and 1c, the South Dakota Board of Technical registration suspended the Licensee's South Dakota professional engineer's license on June 12, 2000 for a period of one year and placed the Licensee on probation for a period of five years.
4. The basis of the imposition of the suspension and probation stemmed from an earlier informal disciplinary proceeding that grew out of the Licensee's repeated false and slanderous allegations of impropriety, unprofessional conduct, and wrongdoing against other professional engineers. Though unfounded, the Licensee continued to make the complaints both publically and to the

South Dakota regulatory board. The complaints were apparently made without regard to following any statutory or regulatory procedure. Through an informal proceeding resolution, the Licensee agreed that he would no longer make unfounded accusations against other professional engineers, agreed that he would follow proper procedure when filing complaints against any professional engineer, and would stop making inappropriate communications with board members.

5. The Licensee almost immediately violated the terms of his informal resolution with the South Dakota regulatory board. He sent letters to members of the regulatory board which might have compromised the board's ability to make fair and impartial determination regarding complaints. He continued to make the slanderous remarks that he had agreed no longer to make. Due to the Licensee's failure to abide by the terms of the informal agreement, formal charges of unprofessional conduct were brought against him. The Licensee admitted during the formal proceeding that he had violated South Dakota administrative regulations governing (1) the rules of professional conduct applicable to professional engineers, (2) requirements to be completely objective and truthful in all professional reports, (3) disregarding the rights of others, and (4) abiding by proper complaint procedures when filing complaints against other professional engineers. Exhibit 1a, pp. 5-6. As a result, the Licensee's South Dakota license was subjected to a one year suspension to be followed by a five-year probation. In addition, the five-year probation included requirements that the Licensee cease engaging his unprofessional conduct and that he attend professional ethics courses.

6. Unfortunately, the one year suspension and five-year probation were insufficient to dissuade the Licensee from continuing to engage in his unprofessional conduct. The Licensee willfully persisted in his malevolent and unprofessional conduct and failed to abide by the terms of his probation. As a result, the South Dakota regulatory board revoked the Licensee's South Dakota professional engineering license on July 19, 2002.

7. On September 9, 2002, one day before the contested hearing in this matter, the Licensee filed a document with the hearing examiner that indicated he was voluntarily surrendering his Montana professional engineer's license.⁽¹⁾

CONCLUSIONS OF LAW

1. The Montana Board of Professional Engineers and Land Surveyors has jurisdiction over the Licensee's license under § 37-1-121, MCA, Title 37, Chapter 1, Part 3, MCA, and § 37-67-331, MCA.

2. The Licensee's voluntary surrender of his license does not deprive the regulatory board of jurisdiction to sanction the license involved in this proceeding.⁽²⁾

3. To impose sanctions against a license, the Department must prove the truth of the allegations contained in the complaint by a preponderance of the evidence. § 37-3-311, MCA; *Ulrich v. State ex rel. Board of Funeral Serv.*, 289 Mt. 407, 961 P.2d 126 (1998).

4. Section 37-1-316, MCA, provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state . . . if the action is not on appeal, under judicial review, or has been satisfied;

* * *

5. The uncontroverted evidence presented in this matter shows that the Licensee committed unprofessional conduct under § 37-1-316 (7), MCA. His professional license in South Dakota was suspended, placed on probation, and, ultimately, revoked. The Licensee has neither appealed nor satisfied the suspension and subsequent revocation. His license is thus subject to the imposition of the sanctions provided in § 37-1-312, MCA.

6. Section 37-1-312, MCA, provides that upon a determination that the licensee has violated Title 37, Chapter 1, Part 3, the board may issue an order providing for, among other things, revocation of a professional license.

7. Revocation of the Licensee's Montana professional engineer's license is appropriate in this case. The purpose of professional and occupational licensing in Montana "is to assure the public of the adequacy of competence and conduct in the regulated professions and occupations." Ch. 429, L. 1995. In furtherance of this policy, the Montana legislature has clearly stated its intention to accord comity to other jurisdictions' founded determinations regarding professional licensing status. It has done so by enacting a specific provision in the Montana code that provides for sanctions upon proof of the imposition of sanctions in another jurisdiction which has been neither overturned nor satisfied. Failing to accord comity to South Dakota's revocation under the circumstances of this case a revocation predicated upon the Licensee's repeated refusal to abide by rules of professional conduct even in the face or progressively stiffer discipline would undercut the very policy embodied in § 37-1-316 (7), MCA.

8. Revocation is also appropriate because, under the particular facts of this case, the Licensee has demonstrated his disregard for professional regulation through his repeated refusal to abide by South Dakota standards of professional conduct. Based on his past conduct, there is no reason to believe that he would be any more compliant in Montana if something less than revocation were imposed.

PROPOSED ORDER

Based on the foregoing, it is recommended that the Montana Board of Professional Engineers and Land Surveyors revoke License #4952 P.E.

NOTICE

Section 2-4-621, MCA, provides that the proposed order in this matter, if adverse to a party other than the agency itself, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.

DATED this 26th day of September, 2002.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT

Hearing Examiner

1. There is no record to indicate that the Montana Board of Professional Engineers and Land Surveyors has, to this date, acted on the Licensee's surrender of his license.

2. *See, e.g., Cross v. Colorado State Board of Dental Examiners*, 37 Co. App. 504, 552 P.2d 38 (1976). In *Cross*, the licensee argued that the regulatory board lost jurisdiction to sanction his license because he had surrendered his license prior to the initiation of license sanction proceedings. He contended that the board had no express statutory authority to conduct a license sanction proceeding after such a voluntary surrender. The Colorado Court of Appeals rejected this argument, noting that in order to effectuate the policy of the statute regulating dental practice, the licensee was not entitled to surrender his license and "thereby divest the regulatory board of its jurisdiction." 37 Co. App. at 508, 552 P.2d at 41. More so than the licensee in *Cross*, the Licensee here is subject to the regulatory board's jurisdiction. Here, the Licensee did not surrender his license until **after** the regulatory board initiated license sanction proceedings.