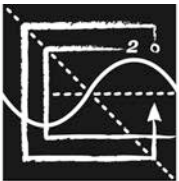


INVESTIGATION AND ENFORCEMENT GUIDELINES

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NCEES



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National Council of Examiners for Engineering and Surveying®

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INTRODUCTION

The goal of NCEES in preparing this manual is to assist its member boards in the statutory responsibility of administering their respective laws pertaining to the regulation of the engineering and surveying professions. The goal of the member boards is to safeguard the health, safety, and welfare of the public by administering the respective laws efficiently, fairly, and judiciously. Regulation of these professions consists of two important functions:

- **Licensure:** to ensure that professional engineer and surveyor applicants are qualified to practice their profession in their respective states and territories
- **Enforcement:** to ensure that licensees are performing their professional services in conformity with the intent and purpose of the law and related rules of professional conduct and to safeguard the public from the unlicensed practitioner

This manual is not intended to be an all-inclusive document and is subject to revisions in order to conform to new legislation, current court decisions, legal opinions, revised board directives, policies, and procedures.

This manual is principally for the use of board members and staff to acquaint them with the guidelines for administering an effective board investigative and enforcement program. Laws under which the various boards operate are the Professional Engineer's Law, the Professional Surveyor's Law, the Administrative Procedures Act, and the related Model Rules of Professional Conduct, which is promulgated by the board for regulating the activities of its licensees.

To achieve the highest degree of uniformity and adaptability to all boards, the statutory requirements in the NCEES *Model Law* and *Model Rules* are the basis of the investigative and enforcement guidelines included in this manual.

Substantial differences in the provisions of the laws and rules governing the practice of professional engineering and surveying in the various jurisdictions will necessarily alter the investigative technique and enforcement procedures suggested in this manual. In addition, it is cautioned that prosecution of criminal actions is very different from prosecution in administrative settings. Often, the level of proof and admissibility of evidence differs. If criminal action is contemplated, enforcement staff should consult with a local district attorney before initiating an investigation.

CHAPTER 1—AUTHORITY PROVISIONS, CODE OF CONDUCT, AND VIOLATIVE PROVISIONS

SECTION 1—AUTHORITY TO INVESTIGATE COMPLAINTS AND SEEK LEGAL REMEDIES

The NCEES *Model Law*, as well as the laws of most states, provides that the state boards of professional engineers and surveyors were created to carry out the provisions of the laws and such other duties imposed upon them by law. These include the power, duty, and authority to receive complaints and investigate violations of the provisions of the laws and rules of professional conduct governing professional engineers and surveyors, as well as the criminal and civil provisions governing nonlicensees.

NCEES *Model Law* 120.60 C contains the following provision regarding the powers of the board:

***Model Law* 120.60 Board Powers**

C. The board is hereby authorized in its own name to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Act or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable under these proceedings.

SECTION 2—CODE OF CONDUCT FOR INVESTIGATORS

The investigator will

- Perform all investigative duties in accordance with the highest moral principles and not engage in conduct that would bring reproach upon the investigator or the engineering and surveying professions
- Respect the privacy of all interested parties and their confidence
- Ensure that all interviews, information, and documents obtained are adequately secure to protect privacy and guard against the inadvertent disclosure of private information
- Conduct all investigations within the bounds of legality and observe the precepts of professional ethics, truth, accuracy, impartiality, and prudence
- Respect the best interests of all interested parties by reporting all facts ascertained, whether they be advantageous or detrimental, and by withholding nothing except as required by law
- Disclose to the board any conflict that would prevent the investigator from performing a fair and professional investigation
- Provide truthful, accurate, and fact-based reports to the board and its legal counsel

SECTION 3—LAW VIOLATIONS

The NCEES *Model Law* contains sections on Grounds for Disciplinary Action and Disciplinary Action Procedures for Licensee and Interns, Unlicensed Individuals, Firms Holding a Certificate of Authorization, and Firms Not Holding a Certificate of Authorization. These list the grounds for disciplinary action that can be found in many board licensing laws and guidelines that member boards can consider when determining the correct disciplinary action to take. The disciplinary action procedures below set forth the procedures that member boards can follow in making investigations. The most current version of the NCEES *Model Law* is available on ncees.org under About/Publications.

Licensees and Interns: Grounds for Disciplinary Action

NCEES *Model Law* 150.10 sets forth the licensee and intern violations as well as the disciplinary action and penalties that are substantially similar to those contained in the disciplinary action provisions in the laws of the majority of the states. This section also contains a list of actions that can be considered when determining the severity of the disciplinary action to be taken.

Licensees and Interns: Disciplinary Action Procedure

NCEES *Model Law* 150.20 sets forth the recommended procedures to be followed in investigations of licensees and interns.

Unlicensed Individuals: Grounds for Disciplinary Action

NCEES *Model Law* 150.30 sets forth the violations applicable to unlicensed individuals as well as the disciplinary action and penalties that are substantially similar to those contained in the disciplinary action provisions in the laws of the many states. This section also contains a list of actions that can be considered by member boards in jurisdictions that have the authority to discipline unlicensed individuals when determining the severity of the disciplinary action to be taken.

Unlicensed Individuals: Disciplinary Action Procedures

NCEES *Model Law* 150.40 sets forth the recommended procedures to be followed in the investigations of unlicensed individuals.

Some jurisdictions do not have the legal authority to prosecute nonlicensed individuals or levy administrative fines. In the best interest of protecting the public, it is strongly recommended that those jurisdictions adopt such legislation. However, for jurisdictions that do not have such authority, the enforcement of the violative provisions against nonlicensees and the prosecution of offenders are generally made the responsibility of duly constituted officers of the state or political subdivisions thereof. However, the development of the facts substantiating these violations must generally be the responsibility of the board prior to presentation of same to the proper prosecutive official. Reluctance on the part of the prosecutor is encountered only when the facts of the violation have not been substantially developed prior to solicitation of an opinion as to prosecution. The licensing laws of most jurisdictions contain provisions enabling boards to apply for relief against nonlicensee offenders by injunction proceedings in the established manner provided in cases of civil procedure.

Firms Holding a Certificate of Authorization: Grounds for Disciplinary Action

NCEES *Model Law* 160.70 sets forth the violations for firms holding a certificate of authorization as well as the disciplinary action and penalties that are substantially similar to those contained in the disciplinary action provisions in the laws of the majority of the states that require certificates of authorization. This section also contains a list of actions that can be considered when determining the severity of the disciplinary action to be taken.

Firms Holding a Certificate of Authorization: Disciplinary Action Procedures

NCEES *Model Law* 160.80 sets forth the recommended procedures to be followed in the investigations of firms holding a certificate of authorization.

Firms Not Holding a Certificate of Authorization: Grounds for Disciplinary Action

NCEES *Model Law* 160.90 sets forth the violations for firms not holding a certificate of authorization as well as the disciplinary action and penalties that are substantially similar to those contained in the disciplinary action provisions in the laws of the majority of the jurisdictions that require certificates of authorization. This section also contains a list of actions that can be considered when determining the severity of the disciplinary action to be taken.

Firms Not Holding a Certificate of Authorization: Disciplinary Action Procedures

NCEES *Model Law* 160.100 sets forth the recommended procedures to be followed in the investigations of firms not holding a certificate of authorization.

CHAPTER 2—COMPLAINTS

SECTION 1—SOURCE

Complaints of violations may originate from one or more of the following sources:

- Consumer public
- Attorneys for client recipients of services
- City and county building departments, engineering departments, and surveying officials
- Registrants or licensees of the board
- Newspaper or other publication articles concerning engineering failures or improper engineering and/or surveying
- Illegal and improper listings in phone directories, websites, or other advertising media
- Published results of civil court actions or criminal convictions against engineers and surveyors
- Board staff investigators
- Phone calls or correspondence to board members or board staff
- Referral from other state agencies or officials
- Corporate charters that include engineering or surveying in their list of activities
- Referral from other NCEES member boards through Enforcement Exchange
- Assumed or fictitious licensure name
- Referrals from professional societies
- Application process for certificates of authorization or individual licensure
- Anonymous (if allowed in the jurisdiction)

SECTION 2—FORM OF COMPLAINTS

The NCEES *Model Law* and the licensing laws governing professional engineering and surveying in most states basically provide that any person or entity, including the board or board staff, may file a complaint against any licensee or certified firm alleging violations of the board's statutes, laws, rules, or regulations. It is advisable that such complaints be in written form prescribed by the board and signed by the person or entity making them. This may include electronic filing of a complaint form with electronic signature. The intent and purpose of this form of complaint are toward complainants who want to file a formal allegation against a licensee. The purpose is not to prevent a board from receiving information about possible violations by licensees and nonlicensees for investigation from someone who does not possess sufficient knowledge or evidence to file formal allegations for disciplinary action by a board. However, even in the latter instances, a board may deem it advisable in complicated or controversial matters to obtain a sworn statement from the complainant and other persons having evidentiary facts concerning the violation.

Appendix A contains a uniform complaint form, and Appendix B contains a form for a sworn statement from a complainant.

SECTION 3—PROCESSING AND EVALUATING COMPLAINTS

When a complaint is received, a member of the board administrative or investigative staff reviews it and determines whether it alleges a possible violation of the licensing statute or law or Rules of Professional Conduct as adopted by the board. Complaints requiring the technical expertise of a professional engineer or surveyor should be referred to a board member or independent professional with that specific expertise.

When a complaint or allegation of violation after evaluation is determined to require investigative attention, the administrative or investigative staff prepares an appropriate report of complaint, assigns a new case number to the matter, and prepares an appropriate index card and file jacket. Before presenting a complaint to the board to determine if an investigation should be opened or a formal charge issued, a board should consider redacting the name and other information that may identify the subject of the complaint. To eliminate potential bias, boards should consider identifying the complaint by case number until formal action is taken.

In all instances, the complainant should be advised whether the board is contemplating action. If no action is warranted, the complainant should be advised that the complaint has been dismissed and be given the reason for its dismissal (for example, no evidence of wrongdoing was found or there is a lack of authority or jurisdiction).

Intake of case

The complaint is received or the case is initiated. If not dismissed or resolved as provided for in Chapter 5, Section 1 with letters of warning, caution, and censure, the case may be evaluated for informal settlement.

Case screening

The substance of the case and whether to proceed must be determined. This review may be made by staff, a special complaint review committee, a board member, or other qualified professional.

Close case or investigate

If the case is not closed at this point, then an investigation should be conducted, with an investigative report issued that would include a rebuttal by the respondent/offender.

Appendix C contains an investigative summary report form.

Review for probable cause

The investigative report is reviewed for a determination of probable cause in jurisdictions where formal charges must be filed. In some jurisdictions, the charges may have already been sufficiently documented to the respondent during the investigative report phase.

Close case or file formal charges**Informal disciplinary process**

Charges: Charges are formalized and reviewed with a determination either to offer a specific resolution to the respondent or to require a conference with the respondent.

Notifying respondent: Some boards will notify the respondent at this point and offer a specific resolution to the case in the form of a consent order or a notice of contemplated action, which will state the offense and the proposed sanction by the board. This action is normally subject to full board approval after acceptance by the respondent. If the respondent accepts the action, the case is closed. A board may conduct an informal fact-finding conference for the purpose of bringing the respondent in to discuss the case, to make further findings of fact, and to arrive at a recommendation for disciplinary action, which can then be accepted by the respondent with a formal settlement agreement. Using an investigative report provided in advance by the staff or attorney for the board, a board may use an advisory committee (sometimes referred to as peer review) made up of professionals who are not board members to conduct a conference with a respondent. The end result of each form of informal action is to reach a conclusion in the case that can be approved by the full board.

Appendix D contains a model procedure for using technical advisors.

Informal conferences

For an informal fact-finding conference or an advisory committee conference (or for a settlement conference, which may be an option offered to a respondent who is not willing to accept the consent order or notice of contemplated action), a meeting is convened to resolve the matter. The conference members may include one or two board members who will later be excluded from any formal hearing, a legal representative/prosecutor (attorney or attorney general representative or enforcement person), a staff member for previous action history and consistency of action (executive director or enforcement director), and the respondent, who may be accompanied by an attorney.

The board will need to establish procedures for the conduct of the conference. It is suggested that the ground rules be stated at the time the respondent is notified about the conference and at the beginning of the conference. The rules should indicate if witnesses are allowed (normally no witnesses or very limited testimony); there is to be no cross-examination; the respondent waives certain procedures; and any information provided by the respondent during the conference may be used in further proceedings. The conference would normally start with the charges and evidence being clearly stated. Some or all of this information may have been previously sent to the respondent. The respondent is allowed to make comments or ask questions. The board member or other professionals are able to respond and ask questions that they believe are necessary for the settlement.

The committee deliberates without the respondent in attendance to arrive at a recommended decision of violation and penalty. The action to be levied may or may not have been communicated to the respondent prior

to the conference. A determination is made to dismiss and close the case, offer a settlement/penalty, or continue the investigation. The committee may reconvene with the respondent to notify the respondent of the offer for settlement, or only written notice may be sent within a set time after the settlement conference date. The offer is communicated to the respondent, and a settlement agreement or consent order is offered for acceptance by the respondent and is subject to final board approval. The proposed order or settlement should be drawn by the attorney for the board stipulating the facts, the violation, and the penalty and be sent with a deadline for acceptance. The respondent can accept and sign the order or request a formal hearing. If the proposed order is signed by the respondent, it is presented to the full board for approval. This may be conducted as a closed hearing if allowed by law. In any event, the respondent would not be allowed to make any statements at the time the recommended order is presented to the board.

The board may use prior settlement decisions to determine the appropriateness of the offer in a particular case. Settlements should be taken as seriously as formal hearings with respect to the basis for the action. Settlement agreements or consent orders should include admissions of violations to provide deterrent effect on future violations and a basis for action by other jurisdictions. While it is preferable for the settlement agreement or consent order to include admission of guilt or admission of specific violations, there may be times when it is in the best interests of all parties to allow for alternate wording rather than specific admissions. The board should ensure that the alternate wording clearly states that the action constitutes discipline so that it can be reported on Enforcement Exchange and be used by other member boards for reciprocal action. It is recommended that serious cases not be settled for civil penalties. It is further recommended that surrender of licenses not be accepted when suspensions or revocations are appropriate. Proper use of a well-planned settlement program will benefit both the individual board and other jurisdictions for reciprocal actions.

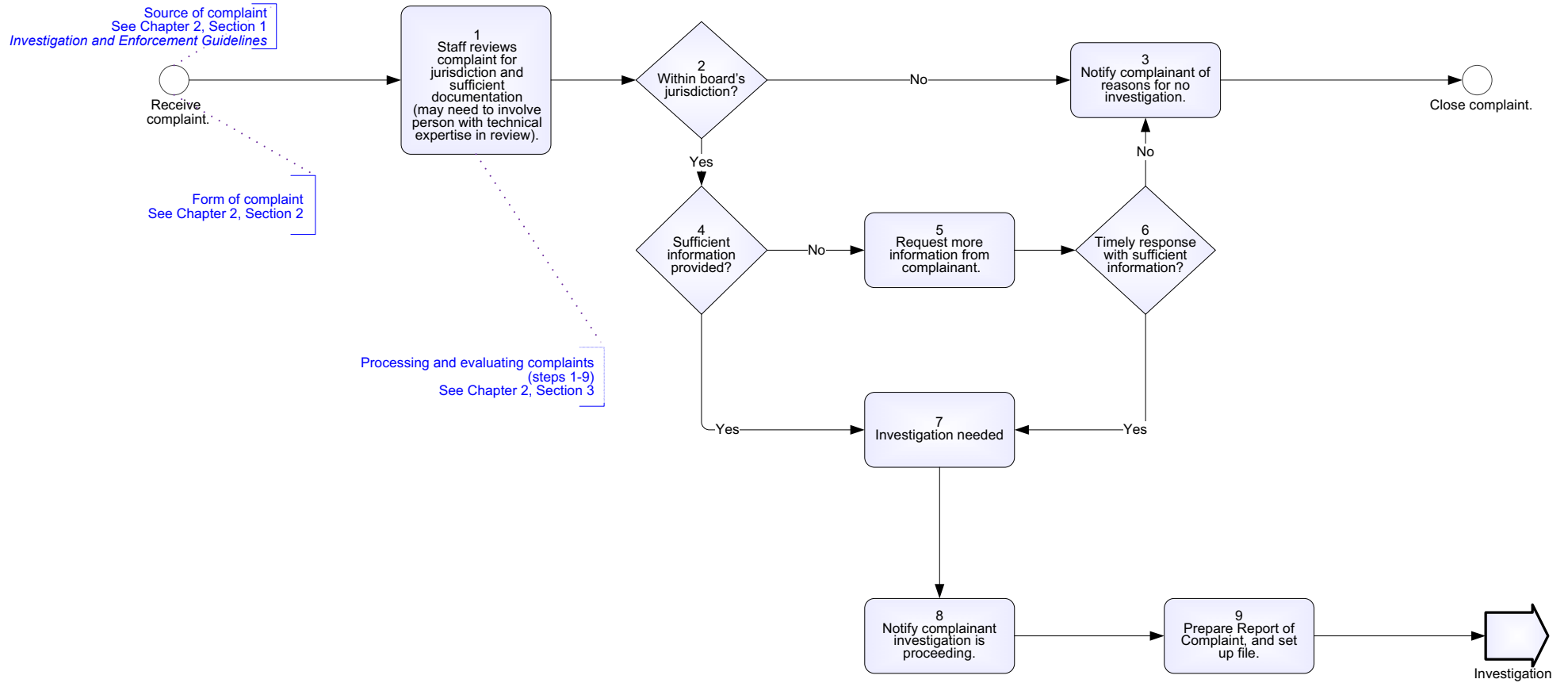
Appendix E contains a stipulation and order.

See Chapter 5, Sections 2 and 3, for additional information.

Formal hearing

If the case has not been settled by the informal disciplinary procedures, it should go to a full formal hearing. See Chapter 5, Section 6, for additional information.

COMPLAINTS FLOW CHART



CHAPTER 3—DISPOSITION OF COMPLAINTS

SECTION 1—UNFOUNDED COMPLAINTS

When the initial inquiry or investigation fails to substantiate the original allegations in the complaint or fails to disclose a violation within the board's jurisdiction, the case is closed and the complainant is so advised.

SECTION 2—REFERRALS TO ANOTHER AGENCY

When during the initial inquiry it develops that the matter falls within the statutory purview of another agency or board, the facts in the complaint and developed through investigation should be referred to the appropriate agency or board, and the complaint should be advised of the referral.

SECTION 3—BOARD ACTION: VERIFIED VIOLATIONS

When board action is required, there are several alternatives. These alternatives are as follows and are more fully discussed in subsequent chapters as indicated in parentheses:

- Board administrative action after preliminary inquiry or investigation (Chapter 5, Sections 1, 2, and 3)
- Formal board hearing after intensive investigation (Chapter 5, Section 6)
- Court litigation/injunctive action (Chapter 5, Section 5)
- Criminal prosecution (Chapter 5, Section 4)

When preliminary investigation has substantially corroborated the allegations in the complaint against a licensee and/or the offender has admitted improper and/or illegal activity with assurance of compliance in the future, the facts, in summarized form, may be referred to the full board with recommendations, where appropriate, as to board administrative action. These recommendations should be based on the willfulness and aggravated nature of the violation, as well as the attitude and past conduct of the licensee.

If it is apparent that a formal board hearing will be necessary in a matter involving a licensee or nonlicensee, the complaint should be referred for further investigation and preparation.

Cases involving either licensees or nonlicensees in which injunctive action appears to be proper should be referred by the board to the legal counsel for appropriate action.

When it appears that either a licensee or a nonlicensee has committed a misdemeanor or felony, the board should refer the matter to the appropriate officials for criminal prosecution.

SECTION 4—BOARD ACTION: PUBLIC NOTIFICATION

When a case is adjudicated and board action has resulted in disciplinary action, public notification should be made through a board newsletter, website posting, or other method as determined by the board.

In addition, the board should post the disciplinary action to Enforcement Exchange on the NCEES website. To help other member boards evaluate the need for reciprocal action, member boards should clearly identify the violator and violations in their consent agreements and board orders. Refer to Chapter 8 in this document for more information about Enforcement Exchange.

To facilitate the effectiveness of Enforcement Exchange, an NCEES staff member has been assigned to assist member boards that do not possess the knowledge, staff resources, or ability to post disciplinary actions to Enforcement Exchange. The NCEES staff member can assist the member boards by means of public records requests; by contacting the member board and requesting disciplinary actions; and by reviewing the member board's newsletters, press releases, and websites.

Member boards that want NCEES to post their disciplinary actions should contact NCEES.

CHAPTER 4—INVESTIGATION

SECTION 1—INVESTIGATIVE PROCEDURES

No all-inclusive investigative procedures are applicable to every violative situation. The investigative techniques used in any particular case depend on the elements of the alleged violation and the extent and depth of the investigation needed to obtain sufficient evidence to establish that violation. Basic investigative techniques and procedures are employed in routine cases only. There are, however, basic investigative techniques and procedures used in the more typical cases addressed by NCEES member boards. Appendix F describes recommended investigative steps. Additional guidance is also available in the NCEES *Investigative Training Manual*.

Licensees

The following are the recommended minimum investigative procedures to be followed in routine cases involving licensees charged with certain violations, such as “rubber stamping” and “practicing outside expertise”:

- Contact the complainant to obtain all available evidence, additional background information, and the identity of any corroborating witnesses.
- When deemed necessary, conduct interviews with corroborating witnesses. Contact others to procure documents, reports, and maps that are of evidentiary value to the case and that provide additional detail on circumstances surrounding the case.
- Contact the appropriate city or county building officials for review of record plans, reports, and specifications. Contact county surveyors or other officials to review maps and records of survey. When these are of evidentiary value to the case, arrange for the production of these documents under subpoena.
- Conduct an interview with the accused licensee to afford an opportunity to furnish an explanation as to the allegations and to make the licensee aware of the provisions of the licensing law that are alleged to have been violated.

In investigations where the complainant or others are determined to have direct personal knowledge and evidence relative to the violation—as in cases involving gross negligence, incompetence, or misconduct in the practice of engineering or surveying—obtain sworn statements as a more accurate manner of fixing testimony and assuring their voluntary future appearance as witnesses in the case. Examples of how statements may be provided by the licensees or witnesses include by handwritten affidavit, recorded oral interview, video interview, and recorded virtual meeting interview. The method will depend on what a particular jurisdiction allows.

From the beginning, conduct each case with the thought it will be resolved by an adjudicatory hearing, even though most cases do not go that far.

Nonlicensees

The most prevalent violations requiring enforcement action by boards against nonlicensees are as follows:

- Illegally practicing or offering to practice or holding out as qualified to practice engineering and surveying
- Illegally using “Engineer,” “Engineering,” “Surveyor,” or “Surveying” in connection with an individual’s name or the name of a firm

The following factors are often responsible for the violation of the licensing laws:

- Lack of knowledge by the general public of the existence, provisions, and purposes of the professional engineering and surveying licensing laws or practice acts
- Ignorance on the part of the majority of violators
- Lack of understanding on the part of local, county, and state officials
- Failure of licensed engineers and surveyors to identify with the problem
- Natural inclination of people to not get involved
- Lack of respect for the licensing law due to lack of enforcement by boards in some jurisdictions

In launching a program to identify violators and to take appropriate action to ensure the discontinuation of such illegal activity in the future, the following initial basic procedures and sources are recommended:

- Reviewing social media and classified advertisement websites such as Facebook, Instagram, and Craigslist for solicitation of engineering or surveying services
- Screening classified section (yellow pages) of phone directories and other similar directories

- Obtaining articles of incorporation or certificates of authority from office of secretary of state on all new companies using the word “Engineer,” “Engineering,” “Surveyor,” or “Surveying” in their names
- Screening fictitious or assumed-name registers maintained by county clerks
- Reviewing county and city occupational license records under classification of “Engineers” and “Surveyors”
- Establishing liaison with state professional engineering and surveying societies
- Establishing liaison with governmental agencies at all levels
- Reviewing Dodge reports, building exchange reports, trade magazines, documents of associated general contractors, and construction project bid plan rooms

The following investigative guidelines are suggested for the enforcement of the statutory provisions against nonlicensees and firms without a certificate of authorization:

- Make initial contact with the suspected violator by letter. This letter should provide a copy of the pertinent section of the licensing law and request appropriate explanation by letter or phone. This first step is an effort to educate the suspected offender and obtain voluntary compliance in an amicable manner.
- If no response is received within 30 days, send a second letter by certified mail with return receipt requested.
- If there is no response to the second letter, conduct an interview with a principal official of the firm or with the suspected individual violator to secure voluntary compliance. Obtain substantiating facts and evidence during the interview.
- When no agreement as to compliance is reached, prepare a complete report of the investigation and, upon review and direction of the board, refer the matter to the attorney general or appropriate governmental authority or legal counsel for injunctive civil penalty proceedings.

In most cases, boards with an active program against such violators have experienced voluntary compliance by the offender.

In aggravated cases involving nonlicensees illegally practicing engineering or surveying and/or using fraudulent professional engineer or surveyor seals on documents to the detriment of the public, the matter after investigation may, upon authority of the board, be presented to the appropriate official for an opinion and prosecution under the misdemeanor provisions in the licensing law. In such cases, a direct interview with the offender should be held in abeyance pending discussion of the facts with the prosecuting official.

SECTION 2—INTERVIEWS

One of the most important investigative techniques is to conduct interviews with witnesses, alleged offenders, and subjects of an investigation. It is desirable to use a trained investigator and for the interrogator or investigator to have a complete knowledge of the case facts and of the elements of the violation alleged to have been committed by the accused. The interview must be thorough and directed in a logical manner toward developing all facts and information to substantiate the violation or to prove that the allegation is without foundation.

The basic investigative procedure for routine cases is to conduct interviews with complainants, witnesses, with possessors of physical evidence, and, particularly in nonaggravated cases involving licensees, with the accused. Similarly, in the case of a nonlicensee where the matter is to be presented to a prosecuting official for an opinion as to criminal prosecution, an interview with the alleged offender may be held in abeyance pending a discussion of the matter with the prosecutor.

Whenever possible, the investigator should select an interview location that will assure privacy, lack of interruptions, and surroundings affording ease and a feeling of security to the interviewee. Lack of satisfactory location for the interview could get in the way of a thorough and successful interview.

When conducting the interview, and to the extent that it can be avoided, the investigator should not reveal the identity of the complainant, the investigator or attorney’s theory of the case, other relevant facts, or any predicated memoranda. The investigator should make initial contact with the witness and make an appointment to talk in person when possible. If an in-person meeting is not possible, a video meeting or telephone interview is an alternative option. When meeting, the investigator should present credentials, proper identification, and explain generally the reason for the interview (e.g., “I’d like to talk with you about your work on the subject project.”). The investigator should be pleasant, not represent any conclusions or speculate on further action, and gather all

relevant facts. While an investigator may obtain a written sworn statement, it may also be prudent to record the interview through other means (audio or video). The investigator and attorney, whether administrative or prosecuting, should review applicable evidentiary law governing such recorded statements prior to planning the interview. In many jurisdictions, both parties must consent to the recording in order for the recorded statement to be admissible in an administrative hearing or court of competent jurisdiction.

Sworn statements should be taken from witnesses and in some cases from the accused when the interrogator questions whether the interviewee will subsequently testify in the same manner. Such sworn statement is a means of better fixing the anticipated testimony and affording the prosecutor in criminal cases and the board's legal counsel in administrative hearings an opportunity to refresh the recollection of the witness at a future date or to impeach the witnesses' testimony.

In obtaining a sworn statement, an introductory statement such as the following is recommended:

"I, *[name of person making statement]*, being duly sworn make the following voluntary statement to *[name of investigator receiving the sworn statement]*, whom I know to be the investigator for the *[board name]*, after having been advised that my statement may be used in a court of law and/or in a board adjudicatory hearing."

If the statement is longer than a page, the interviewee should number and initial the bottom of each page and affix an original signature at the conclusion of the statement, including a closing paragraph similar to the following:

"The above statement numbering ___ pages has been reviewed by me and is the entire truth concerning this matter to the best of my knowledge."

SECTION 3—EVIDENCE

The evidence needed in a particular case will depend on the alleged violation and should be determined to the extent possible in the initial review of the case. The investigator should consult with the board counsel or case prosecutor before commencing the investigation, if possible, to ascertain specific items of evidence to be obtained (i.e., plans, canceled checks, inspection and plans review reports) and from what sources.

Once evidence is obtained, it must be preserved and maintained in the same condition in which it was received. It must be possible when presenting evidence to show that the evidence is identical to the evidence taken into custody.

Upon taking evidence into custody, it should be given an easily identifiable marking so that it can be identified at a later hearing or trial. This marking can be on the evidence itself or on a tag attached to the evidence and should include the investigator's name, initials, and other unique marks. The date and case number should be included.

The investigative report should describe the evidence taken, include the name of the person from whom it was received, and provide an explanation of how it was preserved.

Member boards should implement procedures for dealing with the receipt of electronic documents in their investigations. The following are the recommended procedures. Each member board should consult with its legal advisers to determine any issues specific to the laws within its jurisdiction.

- **Documents received as electronic media:** Electronic media (such as on a USB drive or CD) should be clearly marked as the original, along with the date on which they were received and from whom they were received. A working copy of the electronic media should be made for use by the investigators and other involved parties during the investigation so that the original media cannot be altered or damaged. A screen print of the contents of the electronic media should be made and maintained with them. The electronic media should be kept with the case file, following the same retention policies as those for printed documents.
- **Documents received as attachments to emails:** Documents submitted as attachments to emails should be saved to electronic media (such as a USB drive or in a specified folder on a server), along with the email message itself. If there are multiple attachments to a single email message, the documents should be labeled to make it clear which attachment is which document. A screen print of the email and the contents of the electronic media should be made and maintained with the documents. The electronic media should be kept with the case file, following the same retention policies as those for printed documents.

SECTION 4—EXPERT TESTIMONY

In cases where an expert consultant is deemed necessary to evaluate the evidence and testify as an expert witness in future hearings, the board may procure the services of a licensed professional engineer or surveyor with expertise in the specific technical discipline involved in the allegations.

Appendix D provides a model procedure for using technical advisors.

SECTION 5—REPORTS

Upon completion of an investigation in a matter anticipated to proceed to a court of law or board administrative hearing for disposition, the investigator or staff member conducting the investigation will prepare a report of investigation. This report may contain the following:

- Administrative cover page, including synopsis and prediction
- The details of the complaint or information on which the investigation is predicated
- The facts and circumstances of the case as developed by the investigation, including the names and addresses of all potential witnesses, the nature of their testimony, and the physical evidence they can produce under a subpoena *duces tecum*
- The sections of the law possibly violated
- Any recommendations to the board as a result of the investigation
- List of physical evidence

The parts of the investigative report containing the details from the complainant and the results of the investigation should be limited to the facts and evidence developed and should omit any opinion or assumption on the part of the investigator, unless such opinion or conclusion is material to a better understanding of the facts in an issue and is properly identified as such. Copies of physical evidence obtained during the investigation should be properly identified in the body of the report and attached to the rear of the report. The original physical evidence, properly identified by the investigator, should be retained in a secure place with the official court file maintained by the board.

Appendix C provides a sample investigative summary report form.

SECTION 6—PUBLICATIONS AND AIDS

Investigators should have at their disposal various publications that may assist them in their investigations, define the legal meaning of various words, provide case references, identify sources of records and documents, list pertinent laws and rules, and define engineering or surveying terminology. The publications and materials listed below, while not all-inclusive, will be of assistance to the investigator:

- Black's Law Dictionary
- Copies of investigators' jurisdictional licensing statutes and rules of the board
- Copy of jurisdiction's Administrative Procedures Act
- Dictionary of Architecture and Construction by Cyril M. Harris
- Illustrated Dictionary of Building Design and Construction by Ernest Burden
- Professional Licensing Report newsletter
- Listing of investigators, attorneys, and executive directors for other NCEES member boards
- Roster/directories for jurisdiction's professional societies
- Directories of federal, state, and local government agencies and officials
- Listings by contact name, address, and phone number of potential record sources (e.g., general contractor association offices, planning and permitting officials, secretary of state's office, and other related professional boards)
- Approved access to NCEES Enforcement Exchange on MyNCEES at www.ncees.org

SECTION 7—INTERSTATE COOPERATION IN INVESTIGATION

These guidelines and the form provided in Appendix G are intended to promote cooperation among the member boards and uniformity in investigation and enforcement activities. Interstate cooperation in investigations complements other efforts to achieve these goals. However, this procedure is intended to be used in a limited fashion and should not serve as a substitute for individual member boards' investigative techniques and procedures.

Because of the increasing mobility and interstate practice of professional engineers and surveyors, member board enforcement staff face challenges in investigating alleged violations of law when the licensee is located out of state. The following is a typical example:

Respondent provides engineering or surveying services in connection with a project in State A. The client, contractor, other design professionals, and reviewing officials are all located in State A. The respondent is located in State B and is licensed in both State A and State B. A complaint is filed with the State A board alleging that the respondent has committed misconduct. The investigator for the State A board has obtained the statements and other documents needed for the case from the individuals located in State A, but the investigator cannot travel to State B to interview the respondent, and the respondent has refused to correspond with the investigator. It is critical to the investigator's case to obtain documentation and a written statement from the respondent.

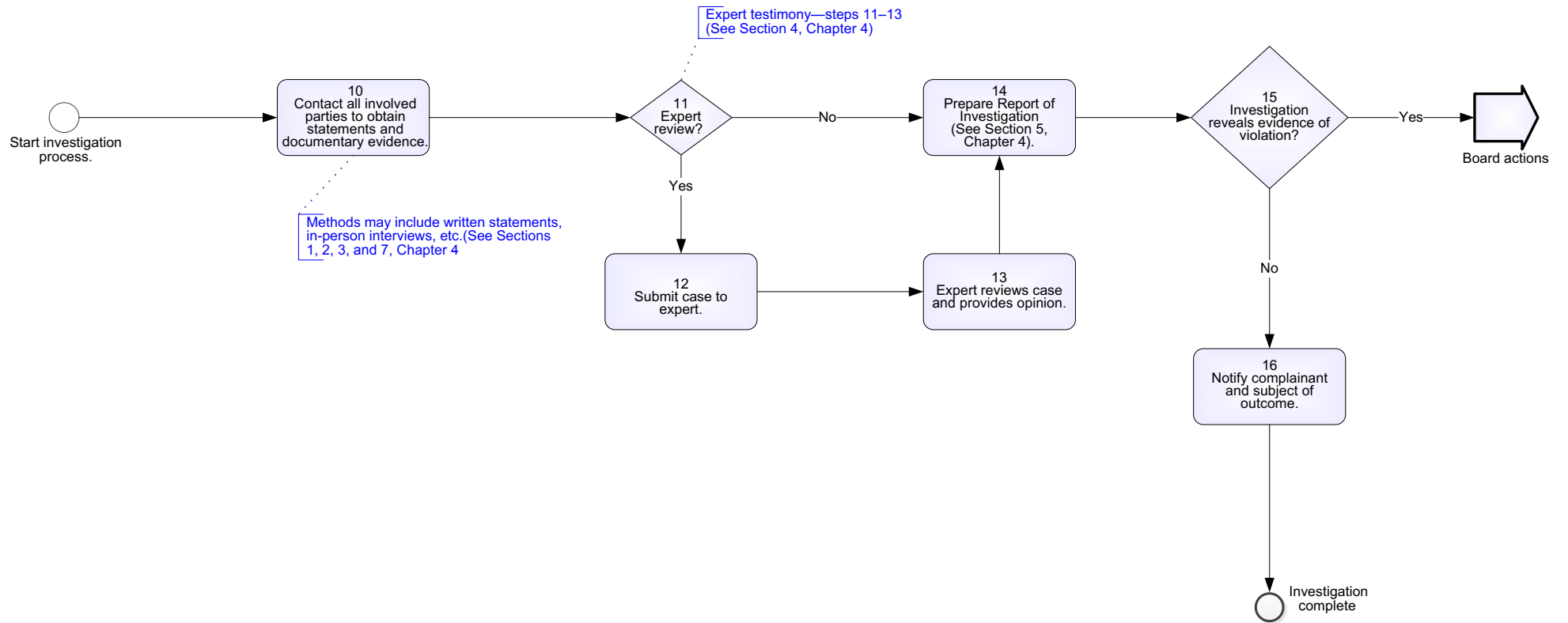
Member boards may use the following procedure, in conjunction with the form in Appendix G, to assist the investigator in obtaining the necessary information from a respondent or other witnesses located in another state. Before using this procedure, the investigator should consult with the board's legal counsel to ensure that attorney-client and attorney work-product privileges are not inadvertently waived as a result of the transmittal of the documents and information necessary to making the request for assistance and take steps to avoid waiving those privileges.

- State A investigator has attempted to reach respondent in State B by phone and by certified or overnight mail, and respondent has not accepted service of the mail or has not responded to other communications from the investigator.
- Investigator A may seek limited assistance from State B's investigator or attorney. If necessary, investigator A may contact the executive director of State B to obtain contact information for State B's investigator.
- Investigator A completes the request for investigative assistance form, providing a brief synopsis of the case and the substance of the investigator's request. The request to the State B investigator should be limited to one of the following:
 - Serve copies of documents (e.g., notice of hearing) on respondent and execute affidavits attesting to having made such service.
 - Obtain sworn, written statement or documents from respondent by visiting respondent in person.
 - Obtain similar information from other identified witnesses located in State B.
 - Investigator B obtains the documentation and submits it, along with any written statements and affidavits, to investigator A. Investigator B's execution of an affidavit attesting to having served documents on respondent should be sufficient proof at any contested case proceeding that service was made (thus making unnecessary investigator B's physical presence at a contested case proceeding in State A).

The intent of this procedure is for State B to assist State A in a limited capacity and as a last resort only after other investigative techniques have proved unsuccessful. State A should be mindful of State B's resources and should not use this procedure to shift its investigative burden to State B.

Requests for investigative assistance other than those listed must be coordinated with the receiving agency prior to submitting the request. Requesting an outside agency to conduct an interview of the subject of the investigation is discouraged. However, if this course of action is unavoidable, the requesting agency must provide a detailed list of questions to the agency conducting the interview. The interviewing investigator should also obtain a sworn written statement detailing the results of the interview.

INVESTIGATION FLOW CHART



CHAPTER 5—BOARD ACTIONS

The enforcement procedures and actions by the various boards are determined without exception by the enabling law and, in a number of jurisdictions, by what is commonly referred to as the Administrative Procedures Act. To be effective, a board's enforcement program must ensure strict compliance with the provisions of the law to safeguard the health, safety, and welfare of the public.

The following enforcement actions taken by various boards to fulfill their statutory responsibility are provided for the information and possible use by all boards in conformance with the provisions of their respective laws.

SECTION 1—LETTERS OF WARNING, CAUTION, AND CENSURE

In less serious violations, the first action on the part of most boards is to use every reasonable effort to obtain voluntary compliance in an amicable manner and to seek legal action against nonlicensees and formal administrative action against licensees only when other methods have failed.

For routine cases against nonlicensees ascertained to be engaged in illegal practice, and/or holding themselves out as qualified to practice professional engineering or surveying, or illegally using the words "Engineer," "Engineering," "Surveyor," or "Surveying" in the name or title of their firm, the board should send letters of warning or caution to such persons or firms instructing that they cease and desist from such practice. Where such action is taken, the persons or firms should be requested to assure the board in writing that they understand the intent and purpose of the warning or caution and will comply therewith in the future.

In certain instances, the investigation of the complaint may reveal that a licensee did—through ignorance, by mistake, or unintentionally—violate the provisions of the engineers or surveyors law. In such case, if this activity did not result in a serious detriment to the public or a client, and the activity was not aggravated or repetitive, the board, after consideration of the facts and circumstances, may direct a certified, with return receipt requested, letter of warning, caution, and/or censure to the licensee, specifically bringing attention to the violation charged. In such case, the licensee should be requested to assure in writing that the intent and purpose of the board's action is understood and that the licensee will comply therewith in the future practice of engineering or surveying.

Most boards that have used the above disciplinary procedure as an initial step toward enforcement against both licensee and nonlicensee offenders have found it to be effective in securing compliance in the majority of cases.

Appendices H through L contain sample warning, caution, and censure letters and related documents.

SECTION 2—INFORMAL INVESTIGATIVE CONFERENCES

In cases where, after investigation, it appears that the matter does not warrant formal board disciplinary action, the investigative committee designated by the board may invite the respondent to appear at an informal educational conference. At the conference, the investigative committee should explain to the respondent the extent of his or her improper and possibly illegal conduct based on the facts and admissions and give the respondent an opportunity to explain the details of his or her involvement with the matter in question. If the investigation committee is satisfied that the respondent will come into compliance with the law, it should prepare a letter of caution and censure to be submitted to the board for approval. The letter then should be sent to the respondent along with a request that the licensee assure the board in writing that future professional practice will comply with the provisions of the law. See Informal Conferences in Chapter 2, Section 3, for additional information

SECTION 3—INFORMAL SETTLEMENTS

Cases may be settled by entering into a settlement agreement or consent order, either with or without a conference with the offender/respondent, provided the laws and board rules for the jurisdiction allow such settlement. Informal settlements are encouraged by the Administrative Procedures Act and will, in most cases, save time, save costs, make the best use of available resources, protect the public, be fair to the respondent, and achieve compliance with the laws and rules governing the professional practice. The following model of procedures for screening cases, for notifying and receiving consent of the respondent, and for documenting the agreed upon disciplinary action is intended only as a guide for member boards; the specific procedures should be based upon the provisions of the law and the rules of the board and the evidence developed during the specific disciplinary proceeding. Effective settlements result from a well-planned settlement program which will consider each stage of the process. See Informal Conferences in Chapter 2, Section 3, for additional information.

SECTION 4—CRIMINAL PROSECUTION

In aggravated cases where the investigation determines that a nonlicensee has engaged in the practice of professional engineering and/or surveying to the detriment of the public, and in pursuance of such illegal activity has used a fraudulent professional engineer's or surveyor's seal or used the licensure number of another licensee, the matter, upon direction of the board, should be presented to a state prosecuting official for an opinion as to prosecution. If the state prosecuting official authorizes and files criminal information, a prosecutive summary report should be furnished and the board should offer full cooperation in the effort to attain successful prosecution.

It has been the experience of many boards that when the case is thoroughly investigated and the facts fully developed, the state prosecuting official readily accepted the case of prosecution and thereupon received a guilty plea from the offender.

Thorough investigation involves establishing a chain of custody of evidence (i.e., making sure every person and/or place touching the piece of evidence is accounted for), timeliness of a case (district attorneys are not likely to pursue old cases), and authentication of documents (authentication requires the document preparer to be available to testify for it to be admissible, unless it is a regularly kept business record and therefore self-authenticating). Many administrative hearing officers allow a certain degree of hearsay to be admitted into evidence, but criminal courts do not. Similar considerations should be given to cases where injunctive relief is requested (i.e., a court order to stop the offending party from performing a particular act).

SECTION 5—INJUNCTIVE ACTION

Injunctive proceedings instituted against a violator, whether a licensee or nonlicensee (individual or firm), are the most successful and effective method of enforcing the provisions of the licensing statute. While most jurisdictions may have injunctive provisions in the general statutes or acts which may be used, most member boards have authority to institute injunction suits incorporated in the board's powers similar to that set forth in the NCEES *Model Law* 120.60 C, which reads as follows:

Model Law 120.60 Board Powers

- C. The board is hereby authorized in its own name to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Act or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable under these proceedings.

Some jurisdictions have specific provisions enabling the use of injunctive action against licensees. The provisions in one jurisdiction's statutes read as follows:

If the board, after a full hearing, determines that any licensed engineer is practicing engineering illegally in this state, it may, by petition to the circuit court of the county wherein such person resides or wherein the licensed engineer practices engineering illegally, petition said court for an injunction restraining such person from the practice of professional engineering and the court, upon sufficient showing, shall have power to issue and carry into effect such an injunction. The procedure for an injunction as aforesaid shall be governed by the rules and statutes applicable to the issuance of injunctions.

Under normal circumstances, injunctive proceedings can be instituted by a board's attorney general representative or legal counsel with a minimum of delay and expense after completion of the investigation, and the permanent injunction secured within a reasonable period of time. An additional advantage of obtaining a permanent injunction against a violator is that continued violation thereafter will subject the individual or firm to contempt of court action and possible criminal prosecution.

From the outset, each case considered as warranting investigative attention should be handled with the anticipation that it will ultimately be resolved in the courts of law, or, in the case of a licensee, by an adjudicatory hearing. (Most cases do not go to such conclusion, as in many cases not of an aggravated nature.)

The board should pursue a policy of using every reasonable effort to obtain voluntary compliance in an amicable manner from the violator and of seeking legal or formal administrative action only when other methods fail.

SECTION 6—FORMAL ADMINISTRATIVE HEARINGS (LICENSEES)

Before full board

All member boards conduct formal administrative hearings to determine whether an individual licensee or a certificate holder is guilty of charges as filed and, if so, what disciplinary action is to be taken against the individual or firm. The procedures in instituting administrative disciplinary action against a licensee—including the filing of the administrative charges, the notice of hearing, the conducting of the hearing, and the determination of guilty and disciplinary penalty—are specifically provided for in the individual jurisdiction’s licensing statute or act, and in some jurisdictions in an administrative procedures act.

As an example, NCEES *Model Law* 150.20 contains the following provisions governing the procedure in disciplinary act proceedings:

***Model Law* 150.20 Disciplinary Action Procedures—Licensees and Interns**

- A. Any person or entity, including the board or board staff, may file a complaint alleging a violation of any provision of this Act or any of the rules or regulations of the board against any licensee or against any intern.
- B. A complaint shall be in writing and state specifically the facts on which the complaint is based.
- C. All complaints shall be reviewed by the board or an investigative committee designated by the board. After review, the board or the investigative committee shall determine or recommend, as appropriate, if charges are warranted.
- D. All charges, unless dismissed by the board as unfounded, trivial, or unless settled informally, shall be heard by the board. The time and place for the hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such accused individual at least 30 days before the date fixed for the hearing. The summons and notice of charges shall be prepared in accordance with *Model Rules* 250.30. At any hearing, the accused individual shall have the right to appear in person or by counsel, or both, to cross-examine witnesses in their defense and to produce evidence and witnesses in their defense. If the accused individual fails or refuses to appear at the hearing, the board may proceed to hear and determine the validity of the charges in the accused individual’s absence. The hearing shall be conducted in accordance with *Model Rules* 250.30.
- E. If after such hearing a majority of the board votes in favor of sustaining the charges, the board shall reprimand, fine in an amount not to exceed *[insert amount]* dollars for each count, recover costs, refuse to issue, restore or renew, place on probation for a period of time, and subject to such conditions as the board may specify, suspend, revoke, or any combination thereof, the accused individual’s license or intern certification.
- F. Order of the board
The board shall issue an order within *[insert number]* days of the date of the hearing. It shall include and shall state separately:
 1. Findings of fact that are based exclusively on the evidence and on matters officially noticed, stated by a concise and explicit statement of the underlying facts supporting the findings.
 2. Conclusions of law
The prosecutor and/or respondent shall be delivered a copy of the findings of fact and conclusions of law by person or by mail with return receipt requested. The attorney of record for the respondent shall also be mailed a copy.
- G. Discipline
Upon an order by the board in which the respondent is found guilty of the charges preferred, the board may take appropriate disciplinary action against the respondent.
- H. Stay order
At its discretion, the board may stay, permanently or temporarily, the execution of its order conditioned on any provision the board believes appropriate under the circumstances for the case.
- I. A licensee or intern aggrieved by any action of the board in levying a fine; recovering costs; reprimanding; placing on probation; denying; suspending; refusing to issue, restore, or renew; or revoking a license or intern certification may appeal the board’s decision to the proper court.
- J. Any financial sanction assessed pursuant to Section 150.10 of this Act shall be assessed in a proceeding as provided in this section. Unless the amount of the penalty is paid within *[insert number]* days after the order becomes final, the order shall constitute a judgment and shall be filed and execution issued thereon in the same manner as any other judgment of a court of record.
- K. An action to enforce an order under this section may be combined with an action for an injunction.

- L. The board may, upon petition of a licensee or intern, reissue a license or intern certification that has been revoked by the board, provided that a majority of the board votes in favor of such reissuance.

The administrative disciplinary procedure is normally initiated by serving upon the accused the statement of administrative charges or the accusation and notice of hearing as prepared by the board's attorney general representative or legal counsel. This statement or accusation sets forth, in ordinary and concise language, the acts or omissions with which the licensee is charged or the statement of issues. In jurisdictions where the formal administrative hearing is held by the board, a notice of the time and place of the hearing should accompany the statement of charges or the accusation. Appendix M contains a model script for a formal disciplinary hearing.

Before a hearing officer

Some jurisdictions may be required by law or may elect on their own to hold administrative disciplinary hearings before a hearing officer rather than before the board. The following is an example of the procedure in handling administrative hearings in a jurisdiction that uses a hearing officer to conduct its hearings.

- The board's attorney general representative or legal counsel prepares the notice of charges—a written statement setting forth the acts or omissions with which the licensee is charged. In the case of an applicant for a license, the attorney general prepares a statement of issues (rather than a notice of charges) that specifies the statutes and rules with which the applicant must show compliance by producing proof at the hearing and that specifies any matters that have come to the attention of the agency that would authorize a denial of a license.
- The notice of charges or statement of issues should be sent by certified mail to the licensee's or applicant's address on record in the official file of the board.
- The notice of charges or statement of issues informs the licensee or applicant of the right to a hearing, the manner and time during which a hearing may be requested and notice that failure to file a notice of defense may cause the agency to take action without a hearing.
- Within 15 days following service of the notice of charges or statement of issues, the licensee or applicant may request a hearing; object to the accusation on the ground that it does not state facts upon which the agency may proceed; object to the accusation on the ground that it is indefinite or uncertain and the licensee or applicant is unable to identify the transaction or prepare a defense; or admit the accusation in whole or in part or present new matter by way of defense. If no answer is received within 15 days of service, the party is in default and the agency may proceed without further notice. If the documents are returned by the post office, the board attempts to personally serve them to reduce the possibility of error. This often involves checking prior addresses, former associates, credit sources, and others in tracing the party.
- If the notice of defense is filed, the matter is scheduled for hearing. A tentative date is secured from all parties involved, including the hearing officer. An available place of hearing, on the date scheduled, is procured and the notice of hearing is mailed to all parties. The date of the hearing is governed by several factors, primarily the calendar of the hearing officer, and the prior commitments of the deputy attorney general who will represent the board. Generally, hearings are set two to three months after receipt of the notice of defense. Continuances requested by either party may further delay the proceedings. Before the hearing has commenced, the agency issues subpoenas and subpoenas *duces tecum* for the production of documents at the request of either party. After the hearing has commenced, subpoenas are issued by the hearing officer.
- A hearing may be held by a hearing officer alone or by the board sitting with the hearing officer. The latter alternative is rarely used because of other demands on the time of board members and the possibility of losing a quorum at some state of the hearing.
- A hearing officer presides at the hearing. At the hearing, all testimony is given under oath or affirmation and is recorded by a reporter. Each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness regardless of which party called that witness to testify, and to rebut any evidence. If the licensee or applicant does not testify personally, the licensee or applicant may be called and examined as if under cross-examination. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons rely in the conduct of serious affairs. Affidavits are admissible as evidence upon proper notice. In reaching a decision, official notice may be taken of any generally accepted technical or scientific matter within the agency's special field and of any fact which may be judicially noticed by the courts.
- After hearing all the evidence, the hearing officer prepares a proposed decision that sets forth the findings of fact, the determination of issues, and the proposed order. The board may adopt the proposed decision in its entirety, reduce the penalty and adopt the balance of the proposed decision, or reject the proposed

decision. If the proposed decision is not adopted, the board may decide the case upon the record, including the transcript, with or without taking additional evidence; or it may refer the case to the same or another hearing officer for further hearing.

- Because of their adjudication function, board members are not advised of the details of the investigation, and their knowledge of the evidence is limited to the evidence introduced at the hearing. This is to prevent bias by board members prior to the orderly presentation of all the evidence by both parties.
- When adopted, the decision is mailed by certified mail to all parties and becomes effective on the date ordered by the board. Generally, the effective date is set approximately 30 days after the date of adoption.
- A reconsideration may be granted prior to the effective date or prior to the termination of a stay of execution, not to exceed an additional 30 days, which the board may grant for the purpose of filing a petition for reconsideration. If no action is taken on the petition for reconsideration within the time allowed, the petition shall be deemed denied.
- Judicial review may be had by filing a petition or appeal in the appropriate court. This petition or appeal must be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by failure to seek reconsideration. If a petition is filed, a transcript and copies of all documents are prepared and submitted to the court. The petition may allege that the agency exceeded its jurisdiction, that there was a prejudicial abuse of discretion, and that the findings are not supported by the weight of the evidence. The court, upon petition, may stay execution of the board's order pending review.
- The judgment of the court may uphold the board's decision or set it aside in whole or in part. In some situations, the court may remand the case to the board for further hearing or reconsideration of the penalty. The judgment of the court may be appealed to the district court of appeals by either party. After decision in that court, a petition may be filed requesting a hearing in the Supreme Court.

The complete processing of a complaint may be lengthy and costly. The objective is to bring out all facts in the interest of fairness and justice. Under some administrative procedures acts, a board may adopt the recommended order of a hearing officer or reduce the penalty without having participated in the hearing or reviewing a transcript of the testimony adduced during the hearing, but must participate in the hearing or review the hearing testimony before increasing the penalty recommended by the hearing officer.

SECTION 7—DISCIPLINARY PENALTIES

After a full hearing of the accused and the finding that the licensee or applicant is guilty of the charge or charges, all boards are generally empowered to issue a formal order setting the disciplinary penalty agreed upon by the requisite majority of board members. The authority for boards to take such action is specifically set forth in their respective enabling statute or act, similar to that appearing in NCEES *Model Law 150.10*.

It is important to remember that the point of a disciplinary order is to protect the health, safety, welfare, and property of the public and not simply to punish the licensee who is the subject of the disciplinary action. In situations where the violations are not so egregious as to warrant revocation (or surrender) or the license, the disciplinary order should be such that it provides for the rehabilitation and reeducation of the licensee so that he or she may continue to or resume practice without further potential harm to the public.

As in the case of one board, a licensee found guilty of the charges filed may, in lieu of the disciplinary penalties referred to above, be assessed a fine in an amount not exceeding \$500. This type of disciplinary penalty has been found to be most effective in the enforcement program of that board and fills the gap between revocation and suspension of a license (a heavy penalty) and the reprimand (a weak penalty). Other penalties less than revocation or suspension may include a period of probation with conditions or other nontraditional penalties, such as those listed below.

Between the time of the filing of the statement of charges or accusation and the administrative hearing, the accused may indicate a desire to stipulate to all or a portion of the charges and to accept, without formal hearing, certain specified disciplinary penalties rather than go through the expense and embarrassment of such hearing. Such stipulation would normally be made to the board's attorney general representative or legal counsel by the licensee's attorney; it would then be presented to the board for acceptance, alteration, or rejection.

Because one of the goals in enforcement is to ensure that offenders understand the laws and rules and do not commit additional offenses, there may be violations that do not require formal disciplinary action but that a

member board feels require educating an individual about applicable laws and rules. In such cases, an alternative to formal disciplinary action may be the use of nontraditional penalties such as those listed below.

Examples of nontraditional penalties:

- Peer review of work for a specified period
- Requiring the licensee to submit reports to the board, either on a regular basis or as requested by the board, regarding the projects they have worked on during a set period of time, including what work they performed on the projects and the names and contact information of the clients for whom the work was performed, so that the board could choose to review some or all of the work
- Informal educational conference with the individual covering the action and an explanation of the laws and rules and the board's expectations
- Requiring additional continuing education requirements or training
- Requiring submittal of the supporting documentation as proof of completion of the required continuing education/professional development at the time of license renewal (rather than waiting for an audit or requesting it after renewal)
- Requiring the licensee to take and pass, with a grade of C or better, college-level courses of three semester units or the equivalent related to the area of violations
- Completion of a board-approved ethics course
- Appearance before the board to discuss the incident
- Requiring the licensee to author a white paper on a subject related to the disciplinary action to be presented to the board for review
- Requiring the licensee to provide a copy of the disciplinary decision/order to their clients and employers and provide the board with a list of all of the clients and employers, and their contact information, required to be notified
- Requiring the licensee to retake the licensing exams
- Requiring the licensee to provide proof that they are in compliance with a civil judgment or settlement, if such civil action is related to the underlying cause for the disciplinary action
- Requiring the licensee to provide reports from criminal probation/parole officers (if the disciplinary action is based on a criminal conviction)
- Requiring the licensee to provide verification from health care providers that they are fit to practice (when the licensee is using physical or mental health issues as an explanation for the violations)
- Placing restrictions on the licensee's area(s) of practice based on the area(s) of practice involved in the matter, such as restricting the licensee from practicing structural engineering when the violations involve incompetence in performing structural engineering
- Requiring the licensee to participate as a "live case study" or give a presentation at a board ethics seminar, at a professional society meeting, or as part of college/university courses to help others understand how the pathway to the violation developed and the lessons learned, including the impact and the regret
- Including language in the decision that new or continued violations may result in further action being taken against the licensee
- Prohibiting the licensee from requesting reinstatement or reissuance of the revoked/surrendered license for a certain period of years (if such reinstatement or reissuance is allowed)

Appendix E contains a stipulation and order. Appendix N contains a guide to suggested disciplinary sanctions. Appendix O contains a voluntary relinquishment of license form.

SECTION 8—RECIPROCAL ACTION

When taking reciprocal disciplinary action based on another member board's actions, it is important to remember that such action may affect the ability to obtain consent agreements in the future. Several member boards have reported that reciprocal actions taken by other member boards have negatively impacted their ability to obtain consent agreements. For example, a licensee balked at signing a consent agreement because he was licensed in several states and was concerned that if he accepted guilt and paid a \$1,000 fine, he would then be sanctioned in the other 15 states in which he was licensed (effectively making the \$1,000 fine a \$16,000 fine). As we improve our ability to publicize disciplinary actions, we must consider that it will become increasingly difficult to obtain consent agreements from offenders licensed in multiple jurisdictions.

In cases where the offense is minor and was adequately handled by the reporting member board, member boards should evaluate the need for reciprocal action on a case-by-case basis. It may be appropriate to send a warning letter or letter of caution advising the offender that if the violation had occurred in this state it would

have been a violation of law and would have resulted in similar disciplinary sanctions. The warning letter then could become part of the permanent file. It would not be considered disciplinary action and would not be reported on the NCEES Enforcement Exchange.

To help other member boards evaluate the need for reciprocal action, member boards should post the violations to Enforcement Exchange on the NCEES website and clearly identify the violations in their consent agreements and board orders. In addition, consent agreements should state whether the action does or does not constitute disciplinary action as defined in *Model Law 110.20*.

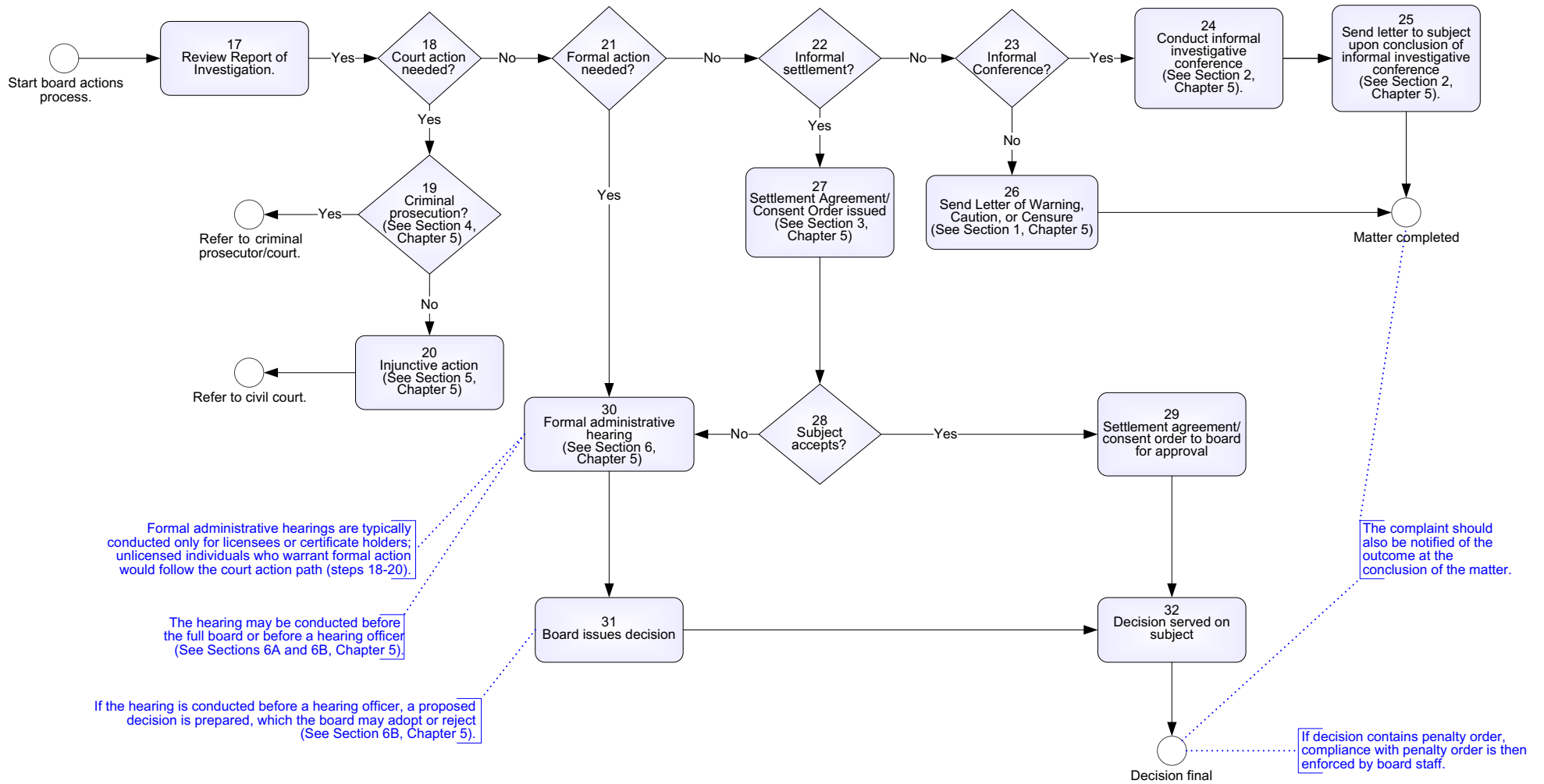
SECTION 9—PROBATION MONITORING

Member boards should establish a person, typically enforcement staff or investigator, to serve as the board's probation monitor. Upon the decision becoming effective, the probation monitor should contact the subject (probationer) and provide specific information on what must be done to comply with the conditions of the disciplinary order, including the dates when compliance is due, and what the consequences could be for noncompliance. It is recommended that a letter be sent, even if contact is initially made in person or by phone. Appendix P contains a probation initial contact letter.

The probation monitor should do the following:

- Develop an internal system for tracking due dates and compliance.
- Establish procedures for how to communicate with the probationer—by phone, in writing, in person, etc. Any in person or phone contact should be followed up via written communication (letter or email) in order to have documentation. Appendices Q and R contain a probation course approval letter and probation condition complied letter, respectively.
- Establish procedures for how noncompliance with conditions will be handled. For example, the probationer could be given additional time to provide proof of compliance or an explanation for the lack of compliance. Appendix S contains a probation violation letter.
- Notify the probationer in writing when all of the conditions have been successfully completed, and the period of probation has ended (if applicable), and there is full compliance with the disciplinary order. Appendix T contains a probation complete letter.

BOARD ACTIONS FLOW CHART



CHAPTER 6—DUE PROCESS CONSIDERATIONS

SECTION 1—GENERAL SUGGESTIONS AND PRECAUTIONS

The principal charge of all boards is to safeguard the life, health, and property of the public. All punitive and disciplinary provisions in the professional engineering and surveying licensing laws and Rules of Professional Conduct were promulgated and all board enforcement activity is directed to this end.

Any thorough and effective enforcement program must take into consideration that the accused—whether one of the board’s licensed professionals or a nonlicensed person—has certain inalienable civil rights that must be observed. As an example, an effort to entrap a subject of investigation into making a confession or damaging admissions or an attempt to prove guilt against the accused through illegal or improper methods must be carefully avoided to prevent adverse criticism and possible inadmissibility in any legal proceeding.

Before board action can be determined, the initial complaint received by a board to charge the subject with a violation must be verified or disproved through investigation. Interviewing the accused is essential to obtaining an explanation concerning the allegations. The results of such an interview may be written as a sworn statement as described previously in these guidelines.

When a personal interview of the accused is deemed advisable and the alleged violation is serious, the interrogator must consider furnishing the subject constitutional warnings before proceeding with the interview. Such action is considered necessary under the *obiter dictum* restrictions placed on an enforcement officer under the U.S. Supreme Court *Miranda* decision. A subsequent decision by the same court in January 1977 *State of Oregon vs. Carl Ray Mathiason* case, pertaining to the administering of the *Miranda* constitutional warning to persons being questioned, appeared to limit the requirement as to furnishing such warnings to instances where there has been a restriction on the person’s freedom by placing the person in custody. In view of the foregoing court decisions, it is generally agreed that such constitutional warnings to the subject of investigation being interviewed are unnecessary where only an administrative disciplinary penalty is possible, but that such warnings to the interviewee are advisable and possibly mandatory where criminal prosecution is indicated.

In cases where it is deemed advisable to furnish constitutional warnings to the accused being interviewed as to allegation of possible violation of the regulator’s statutes, no necessity exists to so elaborate thereon or to belabor such warnings to the extent the accused will refuse to cooperate.

As to the nature of the constitutional warnings with reference to the civil rights of the accused, the normally recommended minimum should be to advise the interviewee as to the following:

- The accused is not required to make any statement.
- Any statement made may be used against the accused in an administrative board proceeding or in a court of law.
- The accused is entitled to the services of an attorney if desired.

The following is the full recommended warning of rights to an accused under the *Miranda* decision.

WARNING OF RIGHTS

- You have the right to remain silent and refuse to answer questions.
- Anything you do say may be used against you in a court of law. Do you understand?
- You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. Do you understand?
- If you cannot afford an attorney, one will be appointed for you before any questioning if you wish. Do you understand?
- If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney. Do you understand?
- Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

Where such constitutional warnings are deemed necessary, the same be casually furnished to the accused early in the interview either during or immediately preceding questions relative to the subject’s general background, education, practice, etc., delaying the specific interrogation as to the details of the allegations until the interviewee has become more at ease to the matter of being questioned.

In the interest of speed without sacrificing effectiveness in the investigation, the constitutional warnings procedure should not be used in all cases and, especially, in those involving an isolated incident of an alleged violation on the part of the accused and, where under normal circumstances, the board would direct the accused to be appropriately censored and cautioned against repetition of such activity in the future.

In all cases where the accused, a licensee of the board, is requested to voluntarily appear before the entire board or a committee of the board, the licensee should always be furnished with the appropriate constitutional warnings by the board's legal representative to ensure admissibility of statements made by this licensee at a future disciplinary hearing, should such be the decision of the board.

Such participation by the board members in the investigation or interview of the accused will not disqualify them from further action in any subsequent disciplinary proceedings under an allegation of unconstitutional bias. In this respect, the 1975 U.S. Supreme Court decision in the case entitled *Winthrow et al vs. Larkin* liberalized the extent of activity by board members in all phases of board action from the inception of the conclusion of the matter without constituting per se a due process violation as might create an unconstitutional risk as to bias. In spite of this decision, it has been generally recommended that boards exercise caution to prevent their board members from too extensively participating in all phases of the board's investigative and adjudicative procedures to eliminate any possible future accusation of a "star-chamber" proceeding.

During a formal board investigative hearing where the board's legal counsel is serving as prosecutor, it frequently becomes necessary for the board to seek legal advice prior to making a ruling on the admissibility of the evidence, legal motions, etc. In such cases, the board's legal counsel could not ethically provide such legal advice as such may constitute a conflict of interest. Boards should consider retaining an additional legal counsel to serve in such advisory capacity. Boards having a private practicing attorney as their legal counsel should either obtain the services of an assistant attorney general or another private attorney, whereas boards using the services of an assistant attorney general as their legal counsel should retain a private practicing attorney.

SECTION 2—RELEASE AND DISTRIBUTION OF RESULTS OF LAW ENFORCEMENT ACTIVITIES

The results of the board's law enforcement activities should be used to the best advantage of the agency and the general public. Many individuals in both the public and private sectors who are not a part of the two professions are unaware of the licensing laws and the authority of the boards to regulate the practice of engineering and surveying in the interest of safeguarding the health, safety, and welfare of the public. When licensing boards effectively exercise their enforcement authority to the betterment of the public, the results should not be limited to the immediate objective of the case involved and routinely filed away in the board's records.

Enforcement information should be shared with other licensing boards, especially where current or probable licensing is involved, or a potential violative situation appears to exist in another board's jurisdiction. Enforcement circumstances encountered by one board may contain elements of an interstate or comity nature of concern to many or all boards. A board's problem may have already been solved by another board or, conversely, a board's solution and disposition may provide pertinent guidance to a neighboring or otherwise interested board.

Therefore, general enforcement information should be submitted to NCEES for dissemination to all member boards through Enforcement Exchange or other specially devised medium. The urgency or seriousness of any particular matter should dictate direct communication with an interested board. Consider, too, sharing voluntary compliance agreements negotiated with national firms or organizations, new case law established through enforcement cases, legal opinions published by the attorney general and other state or federal authorities affecting enforcement activities, and legislation enacted which has a bearing on the enforcement of engineering and surveying licensing laws.

Concurrently, and within the bounds of propriety, the results of enforcement activity that are factual and public information should be considered for public disclosure for purposes of general information and as a deterrent to other violators of the licensing laws. Also, enforcement of licensing laws and public education by boards on the legal benefits derived from the licensing process are prime considerations in sunset legislation.

Disclosure to other licensing authorities

Enforcement information to be disseminated through the central clearing facilities of NCEES should include the following:

- Results of formal disciplinary action against licensees
- Criminal convictions
- Injunctive judgments
- Licensure denials to applicants falsely misrepresenting their education, experience, and/or prior licensing in other states

See Chapter 8 for more information on Enforcement Exchange.

Release as public information

The following guidelines have been excerpted from the report of NCEES legal counsel regarding the publication of such information.

The engineering profession is not alone in its desire to curb abuses of the multiple licensing provisions of the states and establish some mechanism by which a record may be kept and information gathered regarding professionals who become the subject of disciplinary action. In particular, the American Bar Association has approached an almost identical problem and has developed a centralized agency to coordinate disciplinary actions in all participating jurisdictions. (State and federal trial and appeals courts admit practicing attorneys to practice before them.)

In 1970, the American Bar Association approved the recommendations of a Special Committee on Evaluation of Disciplinary Enforcement contained in a report known commonly by the name of its chairman, former Supreme Court Justice Tom C. Clarke. Among the problems explored by the Clarke Report were the inadequate provisions for reciprocal action when an attorney disciplined in one jurisdiction is admitted to practice in other jurisdictions and the failure to publish the achievements of disciplinary agencies. The result was the establishment of the Center for Professional Discipline and the expansion of the National Discipline Data Bank, with their goals being the implementation of the recommendations made in the Clarke Report.

The Center for Professional Discipline currently receives disciplinary information from approximately 80 state and federal jurisdictions on a voluntary basis. These reports disclose the name of the attorney involved, the nature of the disciplinary action (reprimand, suspension, or disbarment), and a copy of the court order imposing the discipline. In return, the center mails the participating jurisdictions a quarterly publication that lists the disciplinary actions made in each jurisdiction and the name of the attorney involved. It is the responsibility of each jurisdiction to examine the publication, first to determine if its disciplinary actions are accurately reflected in the bulletin and, second, to determine if attorneys disciplined in another jurisdiction are also admitted to practice in that jurisdiction. Since the data bank merely stores and retrieves information submitted by the participating jurisdictions dealing with disciplinary actions and does not attempt to compile lists of bar association memberships (an especially difficult problem in the states which do not have a licensing and bar association requirement, or integrated bar), it is unable to ascertain multistate bar memberships. An attorney can thus be the subject of discipline in one jurisdiction and continue to practice in another without detection. It remains the responsibility of each jurisdiction to determine if any of the attorneys disciplined in any other jurisdiction are also admitted to practice in their jurisdiction and then what steps they will take, if any, to investigate the situation to determine if further action is warranted.

Assuming that this description of difficulties presented by the multistate practice of attorneys finds a parallel in the field of professional engineering, it may be useful to apply to engineers some of the recommendations proposed by the Clarke Report and the various bar groups that have considered these problems. The following recommendations will affect the potential invasion of privacy action:

- Require all applicants taking the professional engineering examination or applying for licenses to disclose whether they have ever been the subject of disciplinary action in another state; if so, provide details.
- Require state examining or disciplining authorities to furnish a public record of all disciplinary actions in their jurisdictions.
- Unless laws forbid it, require forwarding of disciplinary information (giving as a minimum the name of the engineer and the nature of the discipline imposed) to the Council.
- Publish this information or make it available to participating states or licensing authorities, but do not disseminate the information to the public or profession generally.

- Require an engineer who has been notified of disciplinary action to notify the appropriate disciplinary authority in those other states in which the engineer is licensed as a condition of license renewal.
- It would be wise for a board to only inform and not recommend that other jurisdictions suspend or otherwise limit the engineer's right to practice in those jurisdictions pending the outcome of the first action.

Each of these recommendations fit within the present framework of the law as it stands with respect to the question of the individual's right to privacy and should pose no difficulty in those jurisdictions where the reporting of professional disciplinary actions is a matter of public record. In jurisdictions in which the information remains privileged or confidential, it is expected that the police powers of the state or the newsworthiness of the event could require the dissemination within that state. At the least, an applicant for the examinations given in each jurisdiction could be asked or required to waive the right to keep the information confidential or released only in limited form to the Council and its participating members.

CHAPTER 7—EXAM IRREGULARITIES

SECTION 1—EXAMS

NCEES develops and scores exams for engineering and surveying licensure. Exams are administered in a computer-based format. A third-party contractor administers the exams based on prescribed administrative procedures. These procedures help ensure that all licensure candidates are examined under comparable conditions.

SECTION 2—NCEES EXAMINEE GUIDE

The NCEES *Examinee Guide* is the official examinee guide to policies and procedures for all NCEES exams. All examinees are required to read this document before starting the exam registration process. Examinees must also confirm they agree to comply with all requirements in the NCEES *Examinee Guide* during exam registration and again on exam day. The NCEES *Examinee Guide* is posted on ncees.org, and examinees can access it from their MyNCEES account.

SECTION 3—EXAM IRREGULARITIES

Fraud, deceit, dishonesty, unprofessional behavior, and other irregular behavior in connection with taking any NCEES exam are strictly prohibited. Irregular behavior includes but is not limited to the following: failing to work independently; impersonating another individual or permitting such impersonation (surrogate testing); possessing prohibited items; violating an exam scheduling restriction; communicating with other examinees or any outside parties by way of cell phone, personal computer, the Internet, or any other means during an exam; disrupting other examinees; creating safety concerns; and possessing, reproducing, or disclosing nonpublic exam questions, answers, or other information regarding the content of the exam before, during, or after the exam administration.

SECTION 4—INVALIDATING EXAM RESULTS

If an examinee fails to comply with the conditions in the NCEES *Examinee Guide*, NCEES has the authority to invalidate the examinee's results and suspend the examinee's ability to take an NCEES examination for up to three years. Evidence of an exam irregularity may be based on the performance of the examinee, a report from an administrator or a third party, or other information.

All irregularities are reviewed by the NCEES compliance and security manager. The following are typical reasons an examinee's exam results are invalidated by NCEES:

- Having a prohibited item in the testing room
- Accessing a cell phone during an unscheduled break
- Exiting the building during an unscheduled break
- Testing twice during a testing window
- Testing more than three times in a 12-month period

The NCEES chief executive officer, chief operating officer, and chief officer of examinations review the irregularity and make the decision to invalidate results or ban an examinee from future testing. NCEES will report the identity of the examinee and the reason for invalidation and/or ban to the affected member board. Based on its rules and laws, the member board should review the irregularity and determine if additional sanctions are required. If a member board objects to NCEES' decision to ban an examinee from future testing, NCEES will update the examinee's account to allow the examinee to select that member board and register for an examination in accordance with the terms set forth by that member board.

CHAPTER 8—ENFORCEMENT EXCHANGE

NCEES member boards, as regulatory agencies, have a mission to safeguard the health, safety, and welfare of the citizens of their respective jurisdictions. That mission includes investigating individuals and firms that compromise the public health, safety, and welfare and ensuring that boards are licensing qualified individuals and firms to offer and practice engineering and surveying.

Qualifications to practice engineering and surveying are not limited to education, experience, and examination. The qualifications to practice engineering and surveying also include the character and integrity of the individuals licensed to practice engineering and surveying. As part of the licensure process, member boards, as regulators, must determine if individuals and firms applying to practice in their jurisdiction will safeguard the public health, safety, and welfare in the performance of their duties. Disclosure of prior disciplinary actions is one way for boards to assess the character and integrity of licensure applicants.

NCEES developed its web-based database system, Enforcement Exchange, to assist member boards in entering and tracking disciplinary actions taken against violators and in reviewing disciplinary actions posted by other jurisdictions. Since its creation in the early 1990s, Enforcement Exchange has proven to be an effective tool for the member boards that use it. Participating member boards use the database to screen licensure candidates and exam applicants for disciplinary actions and to verify that their licensees have not committed violations in other jurisdictions. Use of Enforcement Exchange strengthens the application review process and acts as a central repository for participating member boards to post disciplinary actions, as it is impractical for each member board to review every other member board's newsletter, news releases, and websites for disciplinary actions. NCEES recommends that member boards perform monthly reviews of Enforcement Exchange to determine if their current licensees have been disciplined in another jurisdiction but failed to report it in their jurisdiction.

Currently, member boards are not required to post their disciplinary actions to Enforcement Exchange. It is up to each member board to ensure that disciplinary actions are entered into Enforcement Exchange. The NCEES Committee on Law Enforcement has continued to work to get all member boards to use Enforcement Exchange. One option available to NCEES member boards that are unable to post disciplinary actions to Enforcement Exchange—due to staffing and other limitations—is to have NCEES staff post disciplinary actions. Member boards can contact NCEES staff and set up arrangements to transmit settlement agreements, orders, and other documents to NCEES to post on Enforcement Exchange.

The point of a disciplinary order is to protect the health, safety, welfare, and property of the public and not simply to punish the licensee who is the subject of the disciplinary action. In situations where the violations are not so egregious as to warrant a revocation, suspension, or a voluntary surrender of their license, the disciplinary action should be such that it provides for the rehabilitation and reeducation of the licensee so that they may continue to resume practice without further potential harm to the public and their own registration and livelihood from having fines stacked on them from other jurisdictions after the completion of the original action.

For disciplinary actions that involve quality of work issues and other public protection issues, such as misconduct, gross negligence, gross incompetence, fraud, deceit, and practicing outside area of competence, they should be reviewed on a case-by-case basis for formal disciplinary action that would mirror such penalties (not fines) imposed by the jurisdiction taking the original action to protect the health, safety, welfare, and property of the public.

It is important to remember that if member boards are not using all available tools, they are not serving the public well. As regulators, it is incumbent on each board to assure the public that it is licensing individuals and firms that are technically competent—and that it will act ethically when dealing with the public and other professionals.

CHAPTER 9—MAJOR CONSTRUCTION DISASTERS

SECTION 1—INTRODUCTION

Since the late 1960s, the number of major construction disasters or catastrophic structural failures has increased, resulting in personal injuries and significant loss of life and property. Common causes of such structural failures are as follows:

- Errors in design of permanent structures
- Errors in design of false work
- Lack of communication between designer and constructor
- Poor construction practices
- Material deficiencies
- A combination of the above

Independent investigations are immediately initiated and conducted by building departments, governmental agencies, organization representatives or owner/builder, insurance companies, and victims to determine the exact cause of the failure, the responsibility for such failure, and the necessary remedial actions and preventive measures to avert future failures of a similar nature. The thoroughness and extent of such investigations are controlled by the reason and purpose for which the inquiry was initiated by any individual agency, organization, or person having direct interest in the outcome thereof. The parties interested in assigning responsibility are normally the professional boards for administrative disciplinary actions, if warranted, and the developers and various insurers for purposes of recovery litigation.

With respect to the above, all boards of professional engineers, in cooperation with boards of architecture and contractor licensing boards, should conduct their immediate inquiry with the primary purpose of placing direct responsibility, if any, on their respective licensees, correlating their investigation, where possible, with that of building departments and other governmental organizations. Consideration must also be given to recommending board rules and legislation to avoid such catastrophic failures in the future.

The procedures of this chapter presume that the licensing agency has statutory authority and responsibility to investigate major disasters that may involve its licensees. Each licensing agency should modify these procedures, if needed, to comply with its enabling law.

SECTION 2—THE ISSUE OF RESPONSIBILITY

During an investigation, the issue of responsibility is a major consideration. Responsibility can attach in a number of ways, including but not limited to assumption, statute, or contract. Responsibility must be determined before the issue of negligence arises.

The final assessment as to the responsibility of any party may result in legal action by parties other than the board, including but not limited to insurers. The investigator should be aware of this possibility so that greater care may be exercised to conduct the investigation in a thorough and objective manner with the view of ascertaining the facts relevant to the question of responsibility.

Laws and local code requirements vary considerably in licensure jurisdictions. Therefore, the investigator should become acquainted with the jurisdiction's relevant provisions, as well as the Occupational Safety and Health Administration (OSHA) requirements to assist in developing the facts based on which responsibility can be determined.

SECTION 3—MAJOR FAILURE INVESTIGATIONS

The effectiveness of any investigation depends on the speed and thoroughness of the collection of data and evidence at the incident and of the correlation of the results and analysis of the investigation with the findings of the experts selected to assist in the matter. Therefore, the essential ingredients for success are speed in obtaining necessary data, prompt determination of the failure pattern, and correlation of these results with the technical analysis of experts.

The investigation of major failures should proceed in determining the following:

- What was the nature of the failure?
- Where in the structure did the failure occur?
- When in the construction process did the failure occur?

- How was the failure (or progressive failures) triggered?
- Why did the initial failure occur?
- Who are the responsible parties?

INVESTIGATIVE PROCEDURES

The following investigative procedures are recommended:

- Immediately assign an adequate number of experienced investigators familiar with the field of construction (i.e., investigators in the jurisdiction who handle construction-type investigation for the engineers, architects, contractor boards, or investigators or representatives of each of these boards to handle the matter as a team effort).
- Designate one of the investigators to serve as supervisor to coordinate and chart the general course of the investigation.
- Establish an operation center on the site or near the incident.
- Immediately engage professional consultants in engineering and construction practices with an onsite visit as soon after the incident as possible, making available for their review all construction plans, specifications, structural calculations, contracts, building permits, etc. These professional consultant experts should also be requested to recommend any testing laboratory, field instrumentalist, surveyor, metallurgist, or other experts for a detailed analysis of the failure.
- Assign an experienced photographer to take pictures with clear identifications supplemented by pertinent field sketching.
- Establish working relationships with state attorney's office, local law officials, building officials, and federal agencies such as OSHA and the U.S. Bureau of Standards to ensure unrestricted access to the site and the authority to pursue the investigation by the department of boards; to have input into slowing the cleanup process pending completion of an onsite investigation; and to correlate developments and obtain reports of activity from other agencies.
- In the early stages of the investigative process and periodically, hold conferences between the investigative staff, the legal staff, and professional consultants.
- Undertake and complete the investigation, including all worker and witness interviews, as soon as possible, to establish the following as a minimum:
 - Who had control of the item(s) of work that failed?
 - Who performed the item(s) of work that failed?
 - Did the item(s) of work that failed comply with the requirements of the drawings and specifications?
 - Were the plans and specifications adequate with regard to codes and acceptable engineering practices?
 - Why did the item(s) of work fail?
 - Who were the engineers involved in the construction process?
 - Review all construction documents (paper trail) leading to the actual event:
 - Design and construction contracts
 - Subcontracts
 - Purchase orders covering item(s) of failed work
 - Applicable change orders
 - Project field reports, including testing
 - Preconstruction surveys
 - Drawings and specifications
 - Architect/engineer manual of procedure
 - Progress photographs
 - Minutes of progress meetings
 - All related correspondence
- Special considerations: Fast action by the investigator will provide a tremendous advantage, enabling the investigator to go to the site and collect critical data before rubble and remnants are carted away and disposed of. Rescue operations assume top priority if injury or death occurred in the collapse, but such operations frequently alter wreckage and make reconstruction difficult. If possible, qualified personnel should be present at the site during rescue operations to document the removal and shifting of wreckage so that post-collapse conditions may be substantially preserved.
- After rescue is complete, all parties generally make a frantic effort to clean up the mess and proceed with the project without concern about who is at fault. It is at this stage where the board investigator must attempt to delay the cleanup process pending the investigation and particularly the examination of the collapse site by the expert consultants.

APPENDICES

These appendices include forms and letters related to enforcement activities. They are not all-inclusive and are intentionally simplified, but they are good starting models for the intended purpose. Boards can revise and tailor them to fit their specific needs and to comply with their laws. The text in brackets and italics indicates where information specific to a board, such as the board’s name or the jurisdiction name, should be inserted.

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**Appendix A
UNIFORM COMPLAINT FORM**

Some boards may prefer not to use a standard form. This form could be used if your law does not require a sworn statement for a complaint. If a sworn statement is required, consider use of Appendix B.

[Board name]

Date complaint received: _____

Complaint no. assigned: _____

Complainant's name: _____

Address: _____

Telephone number: _____ Check one: home () cell () work ()

Email address: _____

Name of subject: _____

Address: _____

Telephone number: _____ Check one: home () cell () work ()

Email address: _____

Witness information (including name, address, telephone number, and email address): _____

Details of complaint: _____

Signature (Required to file complaint)

Date

Appendix B
SWORN STATEMENT OF COMPLAINANT

Consider using this form if your law requires a sworn statement from the complainant. If a sworn statement is to be prepared by a board based on information provided by others, the sworn statement of the complainant should be signed by a person who has personal knowledge of the facts. This person is usually an investigator.

[Board name]

[Date]

Attention: Executive director

RE: Complaint against _____, engineer or surveyor, licensed firm, unlicensed person, or unlicensed firm

I, _____, currently residing at _____, in the city of _____, hereby submit the following complaint for consideration of disciplinary action by the board in accordance with section _____ of the _____ [Engineering/Surveying] Practice Act, and the board rules of practice and procedure.

I am personally familiar with the facts and circumstances hereinafter presented and the impropriety of this matter suggests negligence, incompetence, or misconduct in the practice of professional engineering or surveying. Because this matter affects the public's health, safety, and welfare, I am filing this complaint against the above-cited engineer or surveyor, believing that this person's activities and conduct may be in violation of the law or the general board rules.

It is my contention that the cited licensee should be held accountable to the public through the authority of the board for the following conduct, the details of which I am providing to show reasonable cause for the board to investigate and act:

Continue on additional pages if needed; number pages.

Page 1 of ____

Appendix B (continued)

3. I also offer in evidence the following exhibits A through _____. These supportive documents for the board's consideration are included for evaluation of this complaint:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____
- F. _____
- G. _____

4. Below are the names, addresses, and telephone numbers of all other known parties who have a direct interest or possess pertinent information in this matter, whose testimony should be considered by the board in determining its final disposition of this complaint:

5. Based on the foregoing, the cited engineer's or surveyor's conduct appears to conflict with the following section of the law or with the general or disciplinary rule of the board:

6. Therefore, I respectfully request that the board accept this complaint as a matter within its jurisdiction and responsibility, as it bears on the right and privilege of the cited individual to maintain professional licensure and license in _____, and that the board consider taking no less than the following legal or administrative action as allowed by law:

I certify that the statements made by me in this response are true and that any documents attached are true copies.

Name and signature

Sworn to and subscribed before me this _____ day of _____, 20_____, to which witness my hand and seal of office.

[Seal]
[Notary public name]

**Appendix C
INVESTIGATIVE SUMMARY REPORT**

Case File Number: _____ **Date:** _____

Investigator: _____

Complainant: _____

Respondent: _____

Synopsis: _____

Summary and Conclusions: _____

Alleged Violation and Penalties: _____

Exhibits: _____

Appendix D

MODEL PROCEDURE FOR USING TECHNICAL ADVISORS

Background

When a board or individual members of a board, while lawfully engaged under their authority to investigate alleged violations of statutes, regulations, or rules, identify technical subject areas either outside their respective fields of competence or within an area wherein a member(s) is competent but in which a detailed review of subject matter could lead to a necessity for recusing that member from any subsequent adjudicative proceeding as a deciding officer, or for other appropriate justifications, the board or member should consider recommending the selection and appointment of a technical advisor(s) to assist in the review of the subject matter.

Once a decision is made that the technical advisor process will be used in an investigation, a determination must be made as to whether a single advisor or an advisory committee is to be used and what is expected of the advisor or advisory committee. Prior to considering use of technical advisors, a board should determine if its enabling statutes allow for use of such advisors. If so, then a determination must be made as to whether these advisors will be paid or non-paid volunteers, what eligibility requirements must be met for becoming an advisor, how to go about developing a jurisdiction-wide list of advisors, and what procedures are to be followed by the advisors boards may find professional societies willing to help in the identification of qualified technical advisors boards should also consider the issue of liability in regard to use of such advisors.

The following model procedure for use of technical advisors may not meet the specific needs of all NCEES member boards because of the variance in the enabling statutes of member boards and because of differences in how allegations are investigated and who investigates them. It will, however, provide guidelines that can be modified as necessary by member boards to fit their specific needs and does address major concerns such as eligibility criteria and procedure.

Technical advisor definition

For the purposes of this model procedure, a technical advisor is defined as an individual who is commonly recognized as having an expert level of knowledge or skill in a discipline of engineering and/or surveying. Said knowledge or skill may be acquired by higher education, post-licensing training, or repeated exposure to special technical fields through employment engagements, but will be evidenced through professional licensing.

Technical advisor eligibility

Any individual may be eligible to serve as a technical advisor to the board if he/she meets at least the following criteria or other conditions as may be set forth by the board.

- Holds current license in the jurisdiction as a professional engineer or professional surveyor
- Has maintained, or worked for, a regular practice of professional engineering or surveying in the jurisdiction for at least five years preceding appointment
- Is not currently serving as an emeritus member of the board of licensure
- Has not been the subject of formal disciplinary action by any board of licensure for violations involving misconduct and/or malpractice
- Can sign an affidavit, under oath, certifying limited or no prior actual or possible conflict of interest concerning the parties or issue under review and limited or no knowledge of the technical performance of the individual(s) under review

Technical advisory committee definition/organization

For the purposes of the model procedure, a technical advisory committee is defined as a group of technical advisors, as defined herein. The number of members on the committee should be determined by the board. However, it is recommended that committees be set at odd numbers, with a minimum of three technical advisors and not more than five. All members should be competent in the specific subject matter under review. One member should be designated as the committee chair and be responsible for presenting a report of the committee's findings to the board and/or reviewing authority.

Appendix D (continued)

Technical advisor/technical advisory committee procedure

Unless otherwise directed by the board or its designee, the technical advisor/advisory committee will comply with the following procedures.

- Individual technical advisors and technical advisory committee members will serve for the duration of the review of the specified subject matter or until they are excused by the board.
- All work performed by the technical advisor/technical advisory committee is considered confidential and is considered official board business and subject to the appropriate restrictions on distribution of any written report therefrom.
- Technical advisors or technical advisory committee members are not permitted to discuss the matter under their review with anyone other than board members, board staff, board attorneys, or other committee members, unless explicit written permission is granted by the board.
- A report will be prepared by the technical advisor/technical advisory committee chair reporting the findings of the review. This report shall be advisory in nature and not binding on the board. The report shall become a part of the investigative records.
- The technical advisor/technical advisory committee members may interview the respondent, complainant, or witnesses as the committee feels necessary, to reach a valid opinion. Such interview must be conducted in accordance with the rules and procedures prescribed by the board.
- As required, the technical advisor/technical advisory committee chair will provide oral testimony before the board on the contents of any report submitted as a result of their review.

As deemed necessary by the member board for effective law enforcement and as otherwise permitted within the statutes, regulations, and rules administered by the member board, the technical advisory committee set forth in these guidelines may include not more than one individual as a specialty advisor. The following criteria are recommended to apply to such an appointment.

Specialty advisor definition

For the purposes of this model procedure, a specialty advisor is defined as an individual who is commonly recognized as an expert on the subject matter under review but does not hold jurisdictional licensing as a professional engineer or surveyor within the state of jurisdiction on the subject under review.

Specialty advisor eligibility

Any individual may be eligible to serve as a specialty advisor to the board who meets the following criteria or other conditions as may be set forth by the board.

- Is a licensed professional engineer or surveyor in a jurisdiction other than the jurisdiction of the subject matter under review or is recognized and accepted by the board as having satisfactory credentials to be of assistance in the review
- Has prepared published reports or articles related to the subject matter under review
- Has been accepted as an authority on the subject matter or related subject matter by state or federal court
- Can sign an affidavit under oath that he or she has limited or no actual or possible conflict of interest concerning the parties or issue under review and limited or no prior knowledge of the technical performance of the individual(s) under review

Appendix E STIPULATION AND ORDER

Stipulation and order before the [board name]

Matter number: _____

In the matter of disciplinary action against the license and certificate of licensure to practice as a professional [engineer/surveyor], tthe [board name] (“board”) and [name of respondent] (“respondent”) agree as follows in full settlement of the charges in this disciplinary matter.

Findings of fact

The respondent admits to and the board finds:

- Respondent was issued by the board a license and certificate of registration to practice as a professional [engineer/surveyor] on [date], and has held said license and certificate of registration continuously from that date to the present.
- [Admissions of misconduct, substandard practice, or violations of statutes or board rules]
- Respondent understands that he/she has the right to a formal disciplinary hearing regarding the facts admitted in paragraphs 1 through ____ above and to be represented by counsel at all times in this proceeding. Respondent further understands and agrees that by entering into this stipulation and order, he/she is waiving the right to a hearing; he or she is admitting to the facts and conduct described in paragraphs 1 through ____ above; he or she is relieving the board of its burden of proving such facts and conduct; and he or she is giving up the right to present a defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses as he or she may desire.
“The respondent understands that he or she forfeits his/her right to appeal any actions of the board based upon the admitted allegations and the board may take disciplinary action for violations of this order without a hearing on the misconduct admitted by the respondent in paragraphs 1 through ____ above.”

Conclusions of law

The board finds:

- The board has jurisdiction over respondent and over the subject matter of this proceeding.
- Respondent has been afforded an opportunity to obtain legal counsel and has chosen to proceed *pro se* with the understanding that he or she is admitting the facts and conduct described above in the “findings of fact” and voluntarily waiving the right to a formal disciplinary hearing.
- The conduct of respondent, as set forth above in the board’s findings of fact, is grounds for disciplinary action against him/her pursuant to _____.
- This stipulation and order is entered into in lieu of the suspension or revocation of respondent’s license and certificate of registration to practice as a professional _____.

Order

The board orders, and respondent agrees:

- The license and certificate of registration of respondent to practice as a professional [engineer/surveyor] in [jurisdiction] is placed on probation for a period of [number] years, commencing and terminating [dates].

Terms of probation

The terms of probation are as follows:

- Compliance with legal requirements
 - Respondent will comply fully with all [jurisdiction] statutes, regulations, and rules of conduct governing the practice of [engineering/surveying], including without limitation the requirement that he or she be in responsible charge of the preparation of plans or documents to which he or she affixes his/her seal, and that he or she perform services only in the areas of his/her competence.
- Continuing education
 - Within one year of the effective date of this stipulation, respondent shall enroll in and successfully complete the Basic Level Independent Study and Research Program in _____ Ethics and Professionalism at Texas Tech University. Respondent shall submit proof of his/her successful completion of the course to the board in the form of a certificate of completion, a continuing education certificate, or other written form deemed acceptable by the board, within 60 days of completion of the course.

Appendix E (continued)

- Review of work by board monitor
 - Respondent will submit to the board’s program administrator copies of his/her plans and other relevant documents prepared in connection with his/her work performed in for periodic review by a professional _____ selected by the board.
 - The following terms apply to this monitoring plan:
 - Respondent will submit the plans, drawings, specifications, etc., for all of his/her _____ work subject to the provisions listed under “Review of work by board monitor” in this section, to the board’s program administrator within 30 days of the approval or rejection of the plans for the project by the department or other reviewing authority, as the case may be. The board’s program administrator will forward for review the material submitted by respondent to a professional [engineer/surveyor] selected by the board to determine compliance by respondent with applicable statutes and regulations and with the standard of care governing the practice of [engineering/surveying]. The monitor will prepare and submit to the board his/her reports of such review quarterly. Copies of all such reports will be furnished to respondent.
 - Respondent shall promptly comply with all reasonable requests of the board staff for additional documentation and information that is necessary to enable the monitor to review respondent’s work.
 - Respondent will not have direct contact with the monitor concerning any matter related to his/her work submitted for review under “Review of work by board monitor” in this section. All communications shall be by way of the board or its program administrator.
 - Respondent agrees to hold the monitor harmless from any civil liability whatsoever arising from or based upon any action taken by such monitor during his/her activities in performing such monitoring duties for the board, if such monitor acts in good faith, makes a reasonable effort to obtain the facts upon which he or she acts, and acts in the reasonable belief that his/her action is warranted by the facts.
 - Respondent shall bear the costs of this monitoring process, which shall include, but not by way of limitation, reasonable expenses incurred by the monitor and the cost of the professional services of the monitor. These costs shall be itemized and submitted to respondent quarterly. Failure by respondent to pay these costs promptly upon receipt of an invoice shall constitute a violation of this order.
 - Restitution
 - Remedial work
 - Practice limitation
 - Respondent will limit his/her professional practice in _____ to the areas of _____ until such time as he/she demonstrates to the board’s satisfaction that he/she is competent to practice on other areas of _____.

Failure of respondent to comply with any of the foregoing conditions or terms of probation is grounds for the board to terminate his/her probation, and, after hearing, to impose any remedy available to the board based upon such failure or the foregoing findings of fact and conclusions of law. These remedies include, but are not limited to, a letter of admonition, an extended term of probation with additional conditions, and/or suspension or revocation of his/her license. Any alleged violation of the terms of probation must be proven by the board, at a hearing, by a preponderance of the evidence, unless said violations are admitted by respondent.

This stipulation and order shall become an order of the board if accepted by the board and signed and dated by its authorized representative. If this stipulation does not become an order of the board, it shall be void.

This stipulation and order shall be a public record in the custody of the board. This stipulation and order has a total of _____ pages, including signatures pages.

Dated: _____ and effective _____.

Appendix E (continued)

Agreed to by:

Respondent

This matter *[does/does not]* constitute disciplinary action.

Subscribed and sworn to by _____ before me in the county of _____,
state of _____, this day of _____ 20____.

Notary public

My commission expires: _____

Agreed to and ordered by *[board name and name of board chair]*

Approved as to form:

Attorney general

Assistant attorney general

Attorneys for *[board name]*

Appendix F INVESTIGATIVE STEPS

RECEIPT AND EVALUATION OF COMPLAINT

- Determine what actions are required by your statute or administrative code.
- Evaluation of the complaint by appropriate personnel: investigator, executive director, board member, investigative committee, etc.
- Is the matter within board's jurisdiction?
- Does the complaint meet the board's requirements for investigation? For example,
 - Is it in writing?
 - Does it contain identifying information for respondent and complainant?
 - Does it state the remedy sought?
 - Is a signature included?
 - Is it notarized?
- Does information included with the complaint provide sufficient evidence of the allegation?
- Can sufficient evidence be obtained to prove the allegation?

TYPES OF EVIDENCE NECESSARY TO PROVE ALLEGATION

- Invoices, work orders, design plans, surveys, canceled checks, correspondence, board records, renewals, applications, etc.
- Intake of the complaint should include documenting the evidence received. The evidence chain of custody should include who submitted the evidence, date and time received, and the secure storage location. Be sure to be able to answer who has access and control of evidence storage.

NOTICE SERVICE

- A member board's statutes or rules may determine how an individual is served notice of the complaint. It is recommended that notice be served with a required response due date. Typically, notice of the investigation is served via regular or certified mail. The individual may be notified at the board's initial receipt of the complaint or after the investigation has progressed to a certain step depending on the board's policy.
- Ensure attempts to serve notice of the complaint are documented. Documentation may include a certified mail receipt, phone log, etc. A board's statutes may require that notice be served in a specific manner.

TECHNICAL REVIEWS

- In matters of competence, it is generally advisable for the questioned design to be reviewed by a professional qualified in the area of practice prior to the interview of the individual.

INTERVIEWS

- It is strongly recommended that interviews be conducted face to face.
- The interview of the complainant is usually conducted soon after the complaint is received; however, this is not a strict rule.
- The subject of the complaint is routinely interviewed late in the investigation.

PREPARING THE INVESTIGATIVE REPORT

- The investigator usually prepares the investigative report. It is then forwarded to the agency's designated representative, along with the exhibits collected, for a determination if the matter warrants formal charges or other actions (close without disciplinary action, forward to other agency, etc.).

**Appendix H
LETTER REGARDING ILLEGAL USE OF “ENGINEERING” OR “SURVEYING”**

[Seal]
[Board name]

[Date]

[Company name]
Address
City, State Zip code]

To Whom It May Concern:

RE: [Jurisdiction and practice act names]
File number _____

The above referenced act, as a [name of jurisdiction] law, establishes the authority of this board to regulate the practice of [engineering/surveying]. It also restricts the use of [engineering/surveying] terms, or otherwise offering [engineering/surveying] services to the public, to those firms that are actually engaged in the practice of [engineering/surveying], as defined and provided for within the act.

In reviewing our records, we have been unable to identify any _____ licensed professional [engineer/surveyor] in your firm. However, through the use of the word “[engineering/surveying]” in your business name, it would appear that you are making a representation to the public as being legally qualified to engage in the practice of [engineering/surveying]. At this point, that representation appears to be contrary to the provisions of the act.

Because many individuals are unaware of this act, we have enclosed information containing the act and board rules of practice and procedure. We call your attention to sections _____ of the act, and to subcategory _____ of the rules.

To facilitate your response to this query, we have also enclosed a questionnaire. We ask for your cooperation in providing pertinent information that will assist us in determining the propriety of the questioned representation. If you believe our records are not current regarding your firm, we ask for your indulgence by bringing them up to date with the identity of your duly licensed [engineers/surveyors]. An early response will be appreciated, and we believe that any differences can be amicably resolved.

We would be pleased to answer your questions and further explain our position in this matter.

Sincerely,

[Name, signature, and title]

Enclosures

**Appendix I
ENFORCEMENT QUESTIONNAIRE**

[Seal]
[Board name]

[Date]

[Company name
Address
City, State Zip code]

Re: [Jurisdiction practice act name]

Under the provisions of the [names of jurisdiction and practice act], this board is directed to ensure strict compliance with and enforcement of all the provisions of this act. To carry out such responsibility, the board requests the following information:

1. Indicate your firm's type of business organization below, and provide supplemental information as requested.

(a) Single proprietorship _____ (c) Partnership _____
(b) Corporation _____ (d) Other _____

(e) List the names and addresses of proprietors, partners, corporate officers, and board members.

2. Is the firm actually and actively engaged in the practice of [engineering/surveying] or offering [engineering/surveying] services to the public?
Yes _____ No _____

3. If answer to question 2 is Yes, describe the specific nature of such [engineering/surveying] services, works, acts, and projects performed by the firm.

4. Are the [engineering/surveying] services or work performed or done by this firm personally performed by or under the responsible supervision of a professional [engineer/surveyor] licensed by this board?

Yes _____ No _____

File number _____

Page 1 of _____

Appendix I (continued)

5. If the answer to question 4 is Yes, provide the name and address of each licensed *[engineer/surveyor]* performing such services or work, or having responsible charge of such *[engineering/surveying]* services.

6. Of those *[engineers/surveyors]* named in question 5, which ones are considered to be regular, full-time employees of the firm?

7. If any *[engineer/surveyor]* named in question 5 is not a full-time employee, under what arrangements does he or she perform services for the firm? (State name and whether the person is a part-time employee, independent contractor, partner, officer, etc.)

8. If *[engineering/surveying]* work or services are being performed or done by persons not licensed as *[engineers/surveyors]* but under the responsible supervision of an *[engineer/surveyor]* licensed by this board, describe the nature and extent of such supervision.

[Firm name]

[Signature and title]

Appendix J
RECORD REVIEW—CORPORATE CHARTER

[Seal]
[Board name]

MEMORANDUM

[Date]

To: Executive Director

From:

Subject: Record Review—Corporate Division, Secretary of State

RE:

On _____ records of the Corporation Division, Office of the Secretary of State,
_____ were reviewed and the following information concerning captioned
corporation was noted:

Date articles of incorporation or certificate of authority filed: _____

Certificate number: _____ Attorney filing: _____

Corporation is: Domestic _____ or Foreign _____

Initial agent: _____

Initial address: _____

Original directors: _____

Original incorporations: _____

Summary of purpose(s): _____

Remarks: _____

Appendix K
LETTER REGARDING CERTIFICATE OF AUTHORIZATION

Sample letter for use by boards that issue certificates of authorization to corporations that offer engineering or surveying services to the public

[Seal]

[Board name]

[Date]

RE: Certificate of authorization application forms for _____

To Whom It May Concern:

With the annual renewal notice, all _____ engineer and surveyor licensees were advised that the _____ law regulating the practice of engineering and surveying in _____ stipulates that a certificate of authorization shall be required by a corporation, partnership, firm, or association or a person practicing under a fictitious name, offering engineering or surveying services to the public, through individual licensed professional engineers or professional surveyors, as agents, employees, officers, or partners.

We are enclosing a copy of the licensing law and also application forms for the use of your corporation, partnership, firm, or association in filing for this certificate of authorization. The application shall be filed before _____ and shall be accompanied by the \$ _____ application fee.

If your organization does not practice or offer to practice engineering and/or surveying in _____, you should notify the board office and our records will be marked accordingly. We would advise, however, that it is unlawful for a corporation, firm, partnership, or association to use in connection with its name or otherwise assume, use, or advertise any title or description tending to convey the impression that the organization is authorized to offer engineering and/or surveying services unless such organization has received a certificate of authorization from this board.

Sincerely,

[Name, signature, and title of board executive director]

Enclosed: Copy of the *[name of jurisdiction's licensing law]*
Application forms with instruction sheet

Appendix L
THREE LETTERS OF CAUTION

For use only where it is in conformity with a jurisdiction's law

[Seal]
[Board name]

[Date]

[Name, P.S.]
Address
City, State Zip code]

Dear _____:

This will confirm the discussion and the summary of the conclusions reached by the committee of this board as a result of the informal investigative conference held in _____ on _____.

The committee determined to direct your attention to the provisions of chapter _____, _____ statutes, quoted hereinafter as follows:

- 3.a. The board may revoke or suspend a certificate of licensure of a surveyor for:
 - (5) Any gross negligence, incompetence, violation of the rules of professional conduct prescribed by the board or any amendment thereof, or misconduct in the practice of surveying as a professional surveyor.”

On the basis of the discussion, as well as your testimony and that of *[name, P.S.]*, at the above conference, the committee, found as follows:

That you acted improperly and in possible violation of the aforementioned statute in having affixed your professional surveyor's seal to a survey plat that contained violations of the standards of practice for surveying in this state.

The results of this conference, as well as the information which you furnished to the committee, were discussed at a meeting of this board held in _____ on *[date]*, and the board found that under the circumstances and, based on your assurances as to your future compliance, that no formal administrative action appeared warranted. However, the board determined to caution you to exercise greater care to avoid any repetition of such improper, questionable, and possibly illegal activity in the performance of your future professional surveying services.

The board will close this investigation. The case file will be maintained as a matter of record. If you have any questions concerning this matter, or if we can be of assistance, contact our office.

Sincerely,

[Name, signature, and title]

Appendix L (continued)

Send via certified mail—return receipt requested.

[Seal]

[Board name]

[Date]

[Name, P.E./P.S.

Address

City, State Zip code]

Dear _____:

You will recall that on *[date]* our investigator had occasion to visit you at your office in _____ and to discuss with you the impropriety and illegality of your having affixed your professional *[engineer's/surveyor's]* seal and signature to *[design plans/survey plats]* that contained errors and omissions of the acceptable standards of practice for professional *[engineering/surveying]* in this state.

Your attention was directed to the provisions of chapter _____, _____ statutes which provide as follows:

Chapter _____, _____ Professional *[Engineers/Surveyors]* Law

- (1) The board shall have the power to revoke or suspend a certificate of licensure or a certificate of authorization of any person licensed under this chapter, or to place such person or firm on probation should such person or firm be found guilty of:
 - f. Any gross negligence, incompetence, violation of the rules of professional conduct prescribed by the board or any amendment thereof, or misconduct in the practice of *[engineering/surveying]* as a professional *[engineer/surveyor]*.

The facts developed through the investigation were discussed at a meeting of this board in _____ on _____ and, after due deliberation, it is their finding:

- (1) That you acted improperly and in violation of the aforementioned statute in having affixed your professional *[engineer's/surveyor's]* seal and signature to the plans for _____ *[building project/survey plat]*, which admittedly contained errors and omissions of the acceptable standards of practice for professional *[engineering/surveying]* in this state.

It is the direction of the board that you be strongly cautioned to exercise greater care to avoid any repetition of such improper, questionable, and possibly illegal activity in the performance of your future *[engineering/surveying]* assignments.

Sincerely,

[Name, signature, and title]

Appendix L (continued)

[Seal]
[Board name]

[Date]

[Name, P.E./P.S.
Address
City, State Zip code]

Dear _____:

As you are aware, the board has investigated a complaint it received in reference to you providing [design plans/survey plats] that may contain errors and omissions of the acceptable standards of practice for [engineering/surveying]. During the investigation it was determined the [plans/plats] bearing your professional seal and signature did in fact contain errors and omissions of the acceptable standards of practice for professional [engineering/surveying] in this state.

The facts, as developed through this investigation, together with your admission, were discussed at a meeting of this board in _____ on [date]. After due deliberation, the board directs your attention to the provisions of chapter _____, _____ statutes, as quoted hereinafter.

- (1) The board shall have the power to revoke or suspend a certificate of licensure or a certificate of authorization of any person licensed under this chapter, or to place such person or firm on probation for a stipulated period of time, provided five or more members of said board vote in favor of such revocation and suspension or probation, should such person or firm be found guilty of or adjudicated.
 - f. Any gross negligence, incompetence, violation of the rules of professional conduct prescribed by the board or any amendment thereof, or misconduct in the practice of [engineering/surveying] as a professional [engineer/surveyor].

You were further informed that the board's findings in the matter were that you had in fact acted improperly and in possible violation of the aforementioned statute by placing your professional [engineer's/surveyor's] seal and signature to [design plans/survey plats] that contained errors and omissions of the acceptable standards of practice for professional [engineering/surveying] in this state.

It was the board's desire that you be cautioned to exercise greater care in the performance of your professional [engineering/surveying] services to ensure that you avoid any repetition of such improper, questionable, and possibly illegal activity.

The board will close this investigation. We will maintain the case file as a matter of record. If you have any questions concerning this matter, or if we can be of assistance, contact our office.

Sincerely,

[Name, signature, and title]

Appendix M MODEL SCRIPT FOR FORMAL DISCIPLINARY HEARING

The following script is to aid presiding officers, board members, and hearing examiners in their presentation of the rules governing a formal disciplinary hearing held before or on behalf of the jurisdictional board governing engineering and/or surveying licensure. While this script may reflect information that applies in most proceedings for most boards, the final form and content of the script should conform to the rules and statutes governing formal proceedings for your jurisdiction's board.

Presiding officer:

Good *[morning/afternoon/evening]*. My name is _____ and today I am serving as presiding officer for this hearing before or on behalf of the *[board name]*.

This is the time scheduled for the hearing on the statement of charges as issued to *[name of licensee]*, a person licensed to practice *[engineering/surveying]* in *[jurisdiction]* on the *[date]* and concerning *[his/her]* practice of said profession in *(jurisdiction)*. This hearing is being conducted in accordance with the *[applicable jurisdictional law]*. We are present to hear *[name of licensee]* answer the charges in this matter, and we will therefore proceed with the hearing in this case. I will now read the charges unless the respondent waives the reading.

This hearing has been scheduled pursuant to the request of _____ and will be concerned with all related matters based upon the charges made under case number _____.

Seated with me are the following members of the board: *[names of board or panel members]*. Also seated with me is *[name of legal counsel]*, an attorney acting as legal advisor to this board.

[Name of prosecuting attorney, if applicable], an attorney who will represent the jurisdiction of _____ will serve as prosecutor in this matter and will present the jurisdiction's case. *[Name of defense attorney, if applicable, or name of licensee if acting pro se]*, is present and will represent the licensee in *[his/her]* defense of the charges.

This hearing is being held in the *(specify the location of hearing, including facility, street address, and city)*. Notice of this hearing was made in accordance with *(applicable jurisdictional law)* to all parties. A quorum of the board is present.

Before we proceed, I wish to make a few preliminary remarks about the procedure we will follow today. This proceeding will be as informal as is practical within the requirements of the *[applicable jurisdictional law]*. The primary concern of the board is in getting to the truth of the matter in respect to the allegations made in the statement of charges and disposing of them in accordance with the laws of *[jurisdiction]*.

All parties are hereby notified that the technical rules of evidence are not binding on the board or me during this proceeding except for the rules of privilege recognized by jurisdictional law. That is, evidence and testimony that possesses probative value commonly accepted by reasonable prudent individuals in the conduct of their affairs may be accepted into the record. However, the board may use the rules of evidence as guides in some instances.

All evidence and testimony will be evaluated by the board and, if accepted, will be admitted into the record. Evidence offered, but not admitted, will be attached to the record. The jurisdiction of *[name of jurisdiction]* has the burden of proof in this matter and the standard of proof is a preponderance of the evidence.

The general order in which we will proceed is as follows:

1. *[Name of prosecutor]* will present the evidence in support of the statement of charges. *[He/she]* may make an opening statement if *[he/she]* chooses to do so.
2. *[Name of defense attorney or name of licensee acting pro se]* will then present evidence in support of *[his/her]* position. *[He/she]* may make an opening statement if *[he/she]* chooses to do so.
3. Either side may present rebuttal evidence and testimony if desired.

Appendix M (continued)

4. All witnesses who are presented will be subject to cross-examination by the opposing side. In addition, members of the board may interject any questions they may have at any time.
5. Objections to evidence will be ruled upon by the presiding officer.
6. After all evidence and testimony is presented, both sides are permitted to give closing summations.

Now, before we begin, are there any preliminary matters which should be disposed of? If there is no further preliminary business, we will now proceed with the state's presentation.

Appendix N

GUIDE TO DISCIPLINARY SANCTIONS

The following table is intended only as a guide/reference for member boards. How a member board arrives at a decision on disciplinary sanctions should be based upon the provisions of its laws and the development of evidence of punishable violations. Disciplinary decisions arrived at by a board should factor in the effects of aggravating and/or mitigating circumstances.

For better understanding of this table of sanctions, included are definitions of terms that appear in the table. These terms are intended only to help clarify the scope of this table.

Revocation:	A termination of a certificate and/or license to practice. Such action should terminate the use of a certificate number and require that the individual surrender any and all indicia of the license as issued by the board (i.e., wall certificate, wallet card, I.D. card, stamp/seal). In order for an individual to reacquire a license that has been revoked, that individual should be required to requalify under current board requirements.
Suspension:	A termination of licensing privileges for a limited time. The license number is not terminated but may be reinstated after the individual has fulfilled conditions imposed by the board. Surrender of indicia of the license may not be required.
Reprimand:	A formal criticism and/or admonishment directed to the licensee as a result of the violations noted.
Probation:	A condition placed upon an individual's practice that obligates that individual meet various conditions and further demonstrate satisfactory performance in his/her practice over a specific period.
Fine/costs:	A financial penalty imposed upon the licensee based upon the magnitude and frequency of violations. May also include cost recovery to be paid to the board based upon the costs of investigation and litigation. This may also include restitution to individuals damaged by a licensee's conduct.
Caution letter:	A letter issued to the licensee based upon a threshold determination that unacceptable conduct has occurred. This type of letter can be used when it is determined that the above formal sanctions are not appropriate, but some level of criticism is needed.

Appendix N (continued)
PENALTY GUIDELINES

Violations	Minimum	Maximum
Practice with expired license	Pay costs to reinstate license	Reprimand and fine up to \$500 and/or meet reapplication conditions
Practice with suspended or revoked license	As deemed appropriate by the board	Revocation or referral to county prosecutor for criminal charges
Misuse of seal and signature	Warning letter	Revocation
Violation of board order	Meet existing conditions of order and additional \$1,000 fine	Revocation and/or civil penalties and/or referral to county prosecutor for criminal charges
Reciprocal discipline (action taken by other state)	Warning letter	Sanctions up to but not exceeding terms of original order
Conflict of interest	Reprimand and/or \$250 fine	Suspension up to 2 years, \$2,500 fine, ethics study course
Non-compliance with standards	Corrective action, warning letter	Revocation, \$5,000 fine
Ethics violations	\$200 fine	Suspension until completion of ethics study course
Gross negligence	Reprimand, \$250 fine, probation	Revocation, \$5,000 fine, restitution, probation costs deemed appropriate
Incompetency	Reprimand, \$250 fine, probation	Suspension or revocation, up to \$5,000 fine, re-exam, probation
Placing a stamp on documents that were not prepared by or under the supervision of the licensee (plan stamping)	Reprimand, \$100 fine	Revocation and other penalties deemed appropriate
Perjury, false certifications	Reprimand, probation	Revocation, \$5,000 fine
Felony conviction	As deemed appropriate by the board	Revocation
Application fraud or deceit	As deemed appropriate by the board	Revocation or deny issuance of license, forfeiture of fees
Aiding and abetting unlicensed practice	Reprimand, \$500 to \$1,000 fine, ethics study course	Revocation, \$5,000 fine, possible referral to county prosecutor for criminal charges
Unlicensed practice	\$100 fine/citation, cease and desist letter	As provided by law

Appendix N (continued)
SANCTION GUIDELINES

Violations	Minimum	Medium	Maximum
Practice with expired license	Pay costs to reinstate license	Reprimand, pay costs to reinstate license	Reprimand and fine and/or meet reapplication conditions
Practice with suspended or revoked license	As deemed appropriate by the board	As deemed appropriate by the board	Revocation or referral to county prosecutor for criminal charges
Misuse of seal and signature	Caution letter	As deemed appropriate by the board	Revocation
Violation of board order	Meet existing conditions of order and additional fine	As deemed appropriate by the board	Revocation and/or civil penalties and/or referral to county prosecutor for criminal charges
Reciprocal discipline (action taken by other state)	Warning letter	Reprimand	Sanctions up to but not exceeding terms of original order
Conflict of interest	Reprimand and/or fine	Reprimand, fine, ethics study course	Suspension up to 2 years, fine, ethics study course
Noncompliance with standards	Corrective action, warning letter	Reprimand and/or fine, corrective action, probation	Revocation, fine
Ethics violations	fine	Reprimand, ethics study course	Suspension until completion of ethics study course
Gross negligence	Reprimand, fine, probation	Suspension, fine, restitution	Revocation, fine, restitution, probation costs deemed appropriate
Incompetency	Reprimand, fine, probation	Reprimand, remedial education, fine, probation	Suspension or revocation, fine, re-exam, probation
Placing a stamp on documents that were not prepared by or under the supervision of the licensee (plan stamping)	Reprimand, fine	Reprimand or suspension and probation, fine	Revocation and other penalties deemed appropriate
Perjury, false certifications	Reprimand, probation	2-year suspension, fine, probation	Revocation, fine
Felony conviction	As deemed appropriate by the board	As deemed appropriate by the board	Revocation
Application fraud or deceit	As deemed appropriate by the board	As deemed appropriate by the board	Revocation or deny issuance of license, forfeiture of fees
Aiding and abetting unlicensed practice	Reprimand, fine, ethics study course	Suspension up to 2 years, fine, probation, ethics study course	Revocation, fine, possible referral to county prosecutor for criminal charges
Unlicensed practice	Fine/citation, cease and desist letter		As provided by law

Appendix O
VOLUNTARY RELINQUISHMENT OF LICENSE

[Seal]
[Board name]

In RE: _____ Case number _____

License number: _____

Voluntary relinquishment of license

The above named licensee, [licensee name], hereinafter referred to as the "licensee," hereby petitions to voluntarily relinquish his/her license as a professional [engineer/ surveyor], license number _____.

The licensee is executing this document to avoid the necessity and expense of further administrative proceedings in this case. The licensee does not contest that he/she submitted a petition for voluntary relinquishment of license which was incorporated into a final order with the _____.

In the voluntary relinquishment, the licensee did not contest the allegations of the [board name] that he/she had engaged in _____ in the practice of [engineering/surveying]. In addition, licensee agreed to _____ once his/her voluntary relinquishment was accepted. He/she understands that this document will be considered a petition to voluntarily relinquish his/her [engineer/surveyor] license and will become effective when presented to, and accepted by or on behalf of, the [board name]. The licensee does not waive notice and opportunity to be heard with regard to acceptance of this relinquishment.

The licensee understands that upon acceptance of this relinquishment, he/she must cease any practice of [engineering/surveying] in the jurisdiction of [jurisdiction name]. He/she further agrees to return his/her certificate of licensure, wallet card, and seal to the [board name] within seven business days of the acceptance of the consent order. The licensee understands that the final order adopting this petition constitutes disciplinary action taken against his/her license and will become a part of the permanent disciplinary record of the licensee as maintained by the board. Should the board reject this relinquishment, it is agreed that presentation of this matter and materials to the board shall not prejudice the board or any of its members from further participation, consideration, or resolution of any further proceedings herein.

The licensee waives the right to seek judicial review of or to otherwise challenge or contest the consent order adopting this petition for voluntary relinquishment of licensure. Further, the parties hereby agree that each party shall bear its own attorney's fees and costs resulting from the prosecution or defense of this matter.

Dated this ____ day of _____, 20__.

Licensee name (print)

Signature

Before me, personally appeared _____,

Whose identity is known to me by _____
(type of identification)

and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed by respondent before me this ____ day of _____, _____.

Notary public
My commission expires:

Appendix P
PROBATION INITIAL CONTACT LETTER

[Seal]

[Board name]

[Date]

[Name, P.E./P.S.]

Address

City, State Zip code]

Re: License probation

Dear _____:

This letter is regarding the decision of the [board name] in the above-referenced matter, which became effective on [date]. Pursuant to this decision, your license [license number] was revoked. However, the revocation has been stayed and you have been placed on probation for three years upon certain terms and conditions.

Condition 1 requires you to take and successfully complete two college-level courses, with a grade of C or better, specifically related to the area of violation, approved in advance by the licensure board or its designee within two-and-a-half years of the effective date of the decision. You may submit a catalog description or a course outline of the two college-level courses for approval by the board. The board or its designee must approve all courses in advance as meeting the specific requirements of your probation. You must provide the board with an official sealed transcript as proof of successful completion of all courses within 60 days of completion of the course; student grade cards are not sufficient proof. Failure to successfully complete the requisite two courses by [date] will constitute a violation of probation.

Pursuant to Condition 2, you are required to successfully complete and pass a course in professional ethics, approved in advance by the board or its designee, within two-and-a-half years from the effective date of the decision. The board has approved the intermediate-level study (60 PDHs) course of the Comprehensive Levels of Professional Development Hours in Engineering Ethics via Distance Learning as offered by the Murdough Center for Engineering Professionalism, Texas Tech University, as meeting the requirements of this probationary condition. Information regarding the course may be found at the following website: [link]. You may choose another professional ethics course if you wish; however, you must seek advance approval from the board of another professional ethics course as meeting the specific requirements of your probation. You must provide the board with official proof in the form of a letter, certificate, or transcript of your successful completion of the course. Failure to successfully complete a professional ethics course which has been specifically approved by the board as meeting the requirements of your probation by [date], will constitute a violation of probation.

Condition 3 requires you to reimburse the board for its costs of investigation and prosecution of this case in the amount of [amount] within two-and-a-half years from the effective date of the decision. Payments may be made in installments, subject to a payment plan the board has agreed to in writing. Payment shall be made by check or money order sent to the board office at the address listed above. Failure to pay the full amount by [date] will constitute a violation of probation.

Condition 4 requires you to successfully complete and pass the [jurisdiction] laws and board rules examination within 60 days of the effective date of the decision. This examination, which is enclosed, is based upon [act and section number] and the board rules [specific rules and section number]. These laws are available on the board's website at [link to page]. You must complete this examination and return it to the board office for scoring. Failure to provide this required information to the board by [date] will constitute a violation of probation and could result in further action being taken against your license.

Condition 5 requires you to provide the board, within 30 days of the effective date of the decision, evidence that you have provided all persons or entities with whom you have a contractual or employment relationship relating to professional engineering with a copy of the decision in this matter. You are also required, within 30 days of the effective date of the decision, to provide the board with the name and business address of each person or entity required to be so notified. Furthermore, during the period of probation, the board may require you to provide the same notification to all new persons or entities with whom you have a contractual or employment relationship relating

APPENDIX P (CONTINUED)

to professional engineering or professional surveying. This information is due to the board by *[date]*. Failure to provide this required information to the board by *[date]*, will constitute a violation of probation and could result in further action being taken against your license.

Pursuant to Condition 6, you are required to obey all laws and regulations related to the practices of *[professional engineering/professional surveying]* in *[jurisdiction]*. Any violation of any laws and regulations related to the practices of professional engineering and professional surveying shall constitute a violation of probation.

Condition 7 requires you to submit such special reports as the board may require. Any failure by you to submit a special report as required by the board pursuant to this condition will constitute a violation of probation.

Condition 8 requires you to immediately notify the board in writing should you practice exclusively outside the *[jurisdiction name]* during the period of probation. The period of probation shall be tolled during the time you are practicing exclusively outside the *[jurisdiction name]*. Failure to so notify the board shall constitute a violation of probation.

Pursuant to conditions 9 and 10, a violation of any of the probationary conditions described in the decision in the matter of accusation number _____ will result in the board pursuing action to revoke the probation and to impose the revocation of your license which has been stayed. Upon successful completion of all probationary conditions and upon expiration of the probationary period, your license will be fully restored.

All correspondence regarding this matter should be sent to my attention, as the board's probation monitor, at the board's address as listed above or via email to *[email address]*. If you have any further questions regarding this matter, please contact me at *[phone number]* or *[email address]*.

Sincerely,

[Name, signature, and title of probation monitor]

Appendix Q
PROBATION COURSE APPROVAL LETTER

[Seal]

[Board name]

[Date]

[Name, P.E./P.S.

Address

City, State Zip code]

Re: Course approval

Dear _____:

This letter is regarding the decision and order of the *[board name]* in the matter of accusation number _____, which became effective on *[date]*.

You requested approval of the *[course name]* offered by *[name of institution]*. This request has been reviewed by a designee of the board, and it has been determined that successful completion of this course will meet the requirements of Condition 1 of the probationary order. Please provide the board with proof, in the form of official transcripts from *[name of institution]*, of successful completion of this course. Failure to successfully complete this board-approved course, and to provide proof of successful completion by *[date]* will constitute a violation of the probationary order.

If you have questions or concerns regarding this matter, please contact me at *[phone number]* or *[email address]*.

Sincerely,

[Name, signature, and title of probation monitor]

**Appendix R
PROBATION CONDITION COMPLIED LETTER**

[Seal]

[Board name]

[Date]

Name, P.E./P.S.

Address

City, State Zip code

Re: Accusation number _____

Dear _____:

This letter is regarding the decision of the *[board name]* in the above-referenced matter, which became effective on *[effective date]*. Pursuant to this decision, your license *[license number]* was revoked. However, the revocation has been stayed, and you have been placed on probation for three years upon certain terms and conditions.

We are in receipt of your emailed letter of *[date]* and the information you included with it as proof that you have provided all persons or entities with whom you have a contractual or employment relationship relating to professional *[engineering/surveying]* with a copy of the decision in this matter. Based on this information, it appears that you are currently in compliance with Condition 5 of the probationary order. Please be aware that, during the period of probation, the board may require you to provide the same notification to all new persons or entities with whom you have a contractual or employment relationship relating to *[engineering/surveying]*. The board will notify you in writing should it be decided that you must provide this notification during the period of probation.

If you have questions or concerns regarding this matter, please contact me at *[phone number]* or *[email address]*.

Sincerely,

[Name, signature, and title of probation monitor]

**Appendix S
PROBATION VIOLATION LETTER**

[Seal]

[Board name]

[Date]

[Name, P.E./P.S.]

Address

City, State Zip code]

Re: Accusation number _____

Dear _____:

This letter is regarding the decision of the [board name] in the above-referenced matter, which became effective on [date]. Pursuant to this decision, your license [license number] was revoked. However, the revocation has been stayed, and you have been placed on probation for three years upon certain terms and conditions.

A review of the board's records indicates that you have failed to comply with the requirements of Condition 7 of the probationary order, as we have not received evidence that you have successfully completed and passed a course in professional ethics, approved in advance by the board or its designee, by [date]. Due to your failure to comply with the probationary order, we will be submitting this matter to the Office of the Attorney General to pursue further action against your license.

Condition 10 required you to take and achieve the passing score as set by the board for the second division examination, consisting of the NCEES Principles and Practices of [Engineering/Surveying] examination [and the state-specific examination]. You were to have achieved the passing scores for all three examinations no later than [date]. You were provided with information regarding the process to register for the examinations, beginning with the [date] examination cycle. Records indicate that you have not submitted any application fees or registered with the NCEES in order to be scheduled for any of the examinations. At this juncture, there is no possibility for you to achieve passing scores for any of the three examinations by [date]. Therefore, you will be in violation of Condition 10 of the probationary order, and the Office of the Attorney General will be notified accordingly.

Furthermore, Condition 9 required you to successfully complete and pass with a grade of C or better, three college-level civil engineering courses, approved in advance by the board or its designee, by [date]. At least two of the courses must be related to structural engineering. You were required to submit courses for review and approval by the board or its designee. Records indicate you have not submitted any courses for review. It appears that you will also be in violation of this condition of your probationary order. However, if you present evidence of having successfully completed three college-level courses by [date], despite failing to obtain approval for them first, we will take the matter under consideration.

Any compliance with the probationary conditions prior to taking further action will be considered in determining further action. If you have questions or concerns regarding this matter, please contact me at [phone number] or [email address].

Sincerely,

[Name, signature, and title of probation monitor]

Appendix T
PROBATION COMPLETE LETTER

[Seal]

[Board name]

[Date]

[Name, P.E./P.S.

Address

City, State Zip code]

Re: Accusation number _____

Dear _____:

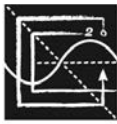
Based upon a review of the board's records and the decision in the above-referenced case, it has been determined that you have complied with all conditions of the disciplinary order.

Therefore, due to your successful completion of the conditions of the disciplinary order and the expiration of the probationary period, your license is now fully restored.

If you have questions or concerns regarding this matter, please contact me at *[phone number]* or *[email address]*.

Sincerely,

[Name, signature, and title of probation monitor]



NCEES

*advancing licensure for
engineers and surveyors*

200 Verdae Boulevard, Greenville, SC 29607
ncees.org