

**TITLE 245 CHAPTER 15.**  
**LICENSURE AND PRACTICE OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**SUBCHAPTER 23. VIOLATIONS**

**245:15-23-1. Prima facie evidence**

- (a) A person, firm, or entity shall be construed to practice or offer to practice engineering or land surveying, who does any of the following:
- (1) practices any branch of the professions the Board regulates, or
  - (2) by display or verbal claim, sign, advertisement, contract, card or other printed, engraved, or written instrument or device, bearing a person's, firm's, or entity's name or in any other way represents to be an Engineer, Professional Engineer, Land Surveyor, or Professional Land Surveyor or a firm providing or having the qualifications to provide engineering or land surveying services, or
  - (3) through the use of some other title implies that the person, firm, or entity is an Engineer, Professional Engineer, Land Surveyor, or Professional Land Surveyor or a firm providing engineering or land surveying services, or
  - (4) holds himself/herself or itself out as having the qualifications to, is able to, or who does contract, offer or perform any engineering or land surveying service.
- (b) The following actions shall not be violations under 59 O.S. 475.1 et seq. and the Rules of the Board:
- (1) Advertising in national publications or electronic media, provided there is no offering of professional services in jurisdictions where not licensed
  - (2) Responding to letters of inquiry regarding requests for proposals, provided there is written disclosure that the engineer/surveyor and firm are not licensed in this jurisdiction and the response is limited to inquiries regarding the scope of project and to demonstrate interest
  - (3) Responding to letters of inquiry from prospective clients, provided there is written disclosure that the engineer/surveyor and firm are not licensed in this jurisdiction and the response is limited to inquiries regarding scope of project and to demonstrate interest
  - (4) Using the title/designation "Professional Engineer", "Engineer", "P.E.", "Professional Structural Engineer", "P.E., S.E.", "S.E.", "Professional Land Surveyor", "Land Surveyor", "P.S.", "L.S." or "P.L.S." or the like on letterheads, or business cards from an office in the jurisdiction where licensure is held.
- (c) Regardless of the above, proposals may not be submitted, contracts signed, or work commenced until the engineer, surveyor and firm become licensed in Oklahoma.
- (d) Any violation of such action noted by this Section shall be sufficient to justify an injunction or any other order or a conviction without evidence of a general course of conduct. The Board shall determine if other legal procedures and penalties are necessary and shall have the power to proceed with any and all legal procedures in addition to the injunction or other such orders issued.

**245:15-23-2. Grounds for violations and penalties – Conduct**

- (a) **Knowledge of Rules.** All persons licensed under the provisions of the act are charged with having knowledge of these Rules which are made known in writing to every licensee and applicant for licensure.
- (b) **Convictions.** A licensee of this Board who has been fined, received a reprimand, voluntarily surrendered a license in order to avoid disciplinary action, had a license revoked, suspended or denied in another jurisdiction for reasons or causes which the Board finds would constitute a violation of the law governing the practice of engineering or surveying in this jurisdiction or any rule or regulation promulgated by the Board may be cause for levying a fine, reprimanding the licensee, denying, revoking, or suspending a license to practice engineering or surveying by the licensee in this jurisdiction.
- (c) Non-payment of fines or penalties or violation of any order approved by the Board may result in disciplinary action against the holder of the Certificate of Licensure or Certificate of Authorization.

### **245:15-23-3. Additional administrative penalties for violations**

Administrative penalties may be levied by the Board separately or in addition to any other penalties or remedies determined by the Board. The Board may seek criminal and civil relief, including injunctive relief, through the courts for violation of the Statutes regulating professional engineering and land surveying, Rules in this Chapter, regulations, or to enforce any order issued by the Board. The Board may seek relief or remedies through the boards and administrative entities of Oklahoma or other states.

### **245:15-23-4. Fraud or misrepresentation**

A. Any licensee, firm, entity, or person associated with or under the responsible charge of any licensee, firm, or entity, holding a Certificate of Licensure and/or a Certificate of Authorization who shall make an oral or written statement or communication to any person that is:

- (1) false and a material misrepresentation, and/or
- (2) made with the knowledge that the statement is false or made while ignorant of the truth, and/or
- (3) made with the intent that the statement shall be relied on by the person and in a manner reasonably foreseeable; provided, and/or
- (4) the person to whom the statement is made is ignorant of the falsity of the statement, or
- (5) the statement is justifiably relied upon by such person, and/or
- (6) such person is caused damage or injury, shall have committed a fraud.

B. Any licensee, firm, entity, or person associated with or under the responsible charge of any licensee, firm, or entity, holding a Certificate of Licensure and/or a Certificate of Authorization who shall make an oral or written statement in any document, report, examination, investigation, advice, representation, plans or specifications that is materially false or misleading either in its content or omission of content there from, or who in any other manner, method or conduct acts in a way so as to mislead or deceive any person, shall be guilty of misrepresentation.

### **245:15-23-5. Gross negligence**

- (a) The Professional Engineer or Land Surveyor is responsible for many professional, technical, ethical and tactical judgments relating to planning, surveys, reports, studies, inspections, designs, plans and specifications, construction materials, methods, techniques and systems processes. The licensee's education, training and experience, or the education, training and experience of the licensee in responsible charge of the services of any Firm, should enable such licensee to make such determinations with confidence in a successful result.
- (b) Each licensee, firm, entity, or person representing same, shall exercise prudent and deliberate consideration in decisions, made only after responsible and thorough investigation, research and, when necessary, expert advice and assistance.
- (c) When the results from such decisions are not reasonably predictable, each licensee, firm, entity, or person representing same, shall so advise the client, and fully disclose the implications involved.
- (d) When such decisions require procedures, techniques, materials, or systems unfamiliar to the planning, design and/or construction team involved, the licensee, firm, entity, or person representing same shall exercise additional care and attention to the process, advancing the result sought.
- (e) The Board may deem acts, errors and/or omissions to be gross negligence if, in the judgement of the Board, a licensee, firm, entity, or person representing same, fails to discharge its duties, obligations and responsibilities, under 59 O.S., Sections 475.1 et seq. and the Rules of the Board, so as to evidence carelessness in reckless disregard for the safety, property or lives of others, or is so great it appears to be a conscious violation of other people's property or rights to health, safety or welfare, as described in (b)-(d) in this subchapter.

### **245:15-23-6. Gross incompetence**

- (a) Licensees have been licensed under the authority of the Statutes regulating professional engineering and land surveying which establishes minimum competence to provide engineering and land surveying services in the State of Oklahoma. Licensees shall continue their professional development after licensure, improving and

increasing their proficiency and skills, knowledge and abilities. The licensee, firm, or entity shall undertake only those professional assignments the licensee, firm, or entity is qualified to perform and lawfully authorized to undertake.

(b) The following practices, among others may be deemed gross incompetence by a licensee, firm, or entity or person representing same:

- (1) A deficiency on the part of a licensee in the basic knowledge and skill necessary to the practice of engineering or land surveying such that the licensee does not demonstrate an ability to practice engineering or land surveying at the threshold level of professional competence for issuing engineering reports or undertaking projects of the kind and complexity performed, thus endangering the property, safety, health of others or welfare of the public.
- (2) Failure to engage other competent licensed architects, engineers or land surveyors when the licensee has contracted to furnish services outside of the licensee's area of competence.
- (3) Practicing engineering or land surveying while under the influence of alcohol, drugs or mentally impaired.

#### **245:15-23-7. Misconduct or dishonest practice**

(a) The following practices, among others, by a licensee, firm, or entity or person representing same, may be deemed misconduct and a violation:

- (1) Acts which evidence attempts to violate any laws or rules of this or any other state relating to licensure to practice engineering or land surveying.
- (2) Acts which evidence a disregard or indifference toward the rules or statutes governing the practice of engineering or land surveying, and codes, ordinances and other recognized standards. These regulations include, but are not limited to, those involving facilities to be constructed, structural inspections and reports, or special inspections for buildings or roadways.
- (3) Acts which evidence attempts to violate or do so violate the Statutes Regulating Professional Engineers and Land Surveyors or Rules in this Chapter or assist any other person or firm to attempt or to do so.
- (4) Acts which evidence attempts to conceal personal interests in conflict with responsibilities of service to the public or a client.
- (5) Acts which evidence, through commission or omission, a failure or refusal to reasonably communicate with the client, so that the client shall be reasonably informed of the status of any services provided or agreed to be provided by the licensee or a firm holding a Certificate of Licensure and/or Certificate of Authorization under the responsible charge of the licensee.
- (6) Acts which evidence a detriment to a client caused by a personal interest or the firm's interest, which conflicts with the responsibility, owed to the client by a licensee, or a firm, holding a Certificate of Licensure and/or Certificate of Authorization, under the responsible charge of the licensee.
- (7) Acts which evidence a failure to engage competent licensed architects, professional engineers and/or professional land surveyors when the licensee has contracted to furnish services outside of the licensee's area(s) of competence.

(b) The following practices, among others, by a licensee, firm, or entity or person representing same, may be deemed a dishonest practice and a violation:

- (1) Acts which evidence attempts through commission or omission, to mislead or defraud any person, firm, or entity.
- (2) Acts which evidence attempts to bribe any person, firm, or entity, who may influence the selection of any licensee, firm, or entity. Kickbacks, donations or forgiveness offered or paid to gain improper advantage in selection will be considered bribes.
- (3) Acts evidenced by exaggerated, misleading, deceptive or false statements in claims about professional qualifications.

#### **245:15-23-9. Filing a complaint; forms and evidence; Formal Notice of Charges**

- (a) Any person or entity, including the Board or Board staff, may file a complaint alleging violations of these Rules, Title 59 O.S. Section 475.1 et seq., and the Corner Perpetuation and Filing Act, Title 65 O.S. Sections 3.116-3.123.
- (b) All complaints may be made on forms prescribed by the Board, which are available from the Board, or by other means. The complainant may submit anonymous complaints, which may be investigated by Board staff as described in policies and procedures of the Board.
- (c) When a complaint is received it shall be referred to an investigation committee designated by the Executive Director or Director of Enforcement. The investigation committee shall make a determination if probable cause exists for taking further action or for issuing a Formal Notice of Charges. Action against the individual, licensee, entity or firm holding a Certificate of Authorization may be brought in the name of the Board.
- (d) In the event the investigation committee determines that a probable cause exists, the legal counsel of the Board shall be requested to prepare a Formal Notice of Charges.
- (e) The Formal Notice of Charges shall be personally served or mailed to the last known address of the respondent(s) at least 30 days before the date fixed for hearing.
- (f) The Formal Notice of Charges shall show the time, place, and nature of the hearing, a statement of legal authority and jurisdiction under which the hearing is to be held, a reference to the particular section of the statutes and rules involved, and a short and plain statement of the matters asserted. The Formal Notice of Charges shall indicate that at any hearing the accused individual, licensee, entity or firm holding a Certificate of Authorization shall have the right to appear in person, by counsel, or both to cross-examine witnesses in his/her or its defense and to produce evidence and witnesses of his/her or its own defense. If the accused person or firm fails or refuses to appear, the Board may proceed to hear and determine the validity of the charges.
- (g) Hearings conducted in accordance with OAC 245:15-23-15 are subject to the rules of evidence specified by the Oklahoma Administrative Procedures Act.

#### **245:15-23-10. Resolution by settlement**

Those matters in which a mutually agreed settlement is sought may be referred to the investigation committee or terminated. Any proposed final disposition of a violation shall be recommended to the Board for approval.

#### **245:15-23-15. Hearings**

##### **(a) General provisions.**

- (1) At any hearing, the licensee, firm, entity, or person, charged with a violation shall enjoy the rights:
  - (A) against self-incrimination; and
  - (B) of confidential communication with his/her spouse, attorney, clergyman, priest and/or physician; and
  - (C) of withholding confidential or privileged records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States; and
  - (D) of cross examination; and
  - (E) of counsel.
- (2) All motions, except for a motion to continue, must be filed seven (7) days prior to the scheduled date of the hearing. Responses to motions, if any, must be filed two (2) days prior to the hearing.
- (3) The parties shall exchange names of all witnesses they anticipate testifying and the exhibits they plan to introduce ten (10) days prior to the hearing. Additional witnesses may be called and exhibits entered subject to the approval of the Board.
- (4) The first motion for a continuance filed on behalf of a party may be granted by the Executive Director. Any additional requests for a continuance must be presented to, and approved by the Board.

(b) **Hearing record.**

(1) The hearing records shall include:

- (A) all pleadings, motions and intermediate rulings;
- (B) evidence received or considered;
- (C) questions and offers of proof, objections, and ruling thereon;
- (D) proposed findings and exceptions;
- (E) any decision, opinion, or report by the officer presiding at the hearing, if any;
- (F) any records, including records of the Board, of which the Board chooses to take judicial notice;
- (G) all staff memoranda or data submitted to the hearing officer, if any, or member of the agency in connection with their consideration of the case;
- (H) an opinion, rendered by a state officer or authority, required by statute or Executive Order, sought by the Board or designated staff prior to the order being filed with the Board.

(2) Oral proceedings or any part of the oral proceedings shall be transcribed on request of any party. The requesting party shall pay all costs incurred for the original transcript and other parties requesting copies shall bear the cost of additional copies.

(3) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(c) **Methods of hearings.** Hearings shall be conducted by one of the following methods as determined by the Board:

- (1) by the Board;
- (2) by a member or emeritus member of the Board or its designee acting as hearing examiner;
- (3) by an attorney licensed to practice before the Supreme Court of the State of Oklahoma acting as hearing examiner.

(d) Unless precluded by law, any party may waive rights and proceed by stipulation, agreed settlement, consent order or default. No provision in the rules shall be construed as prohibiting the Board from continuing to a later date, suspending or holding in abeyance any formal or civil proceeding pending the outcome of informal negotiation or informally agreed upon terms.

**245:15-23-16. Hearing disqualification procedures**

Any Board Member or Hearing Examiner shall withdraw from any proceeding in which the individual cannot render a fair and impartial hearing or consideration. Any party may request such disqualification by filing a motion pursuant to OAC 245:15-23-15(a)(2) detailing the alleged grounds for disqualification. The issue shall be referred to the Board to be determined promptly by the Board, or the remaining members thereof, and upon disqualification the Board shall assign another Hearing Examiner and if necessary, as provided by Statutes of Oklahoma, seek appointment of an additional member or members pro-tem.

**245:15-23-17. Powers of hearing authority**

A hearing authority shall require the furnishings of information; the attendance of witnesses; and the production of books, records, papers or other objects as may be necessary and proper for the purposes of the hearing. Any party to a proceeding may take depositions of witnesses in the same manner as provided by law in any civil actions before courts of record and such depositions may be submitted into evidence subject to the right of objection at the time of hearing as provided by law in any civil actions before courts of record. The hearing authority may admit into evidence and take judicial notice of any records, including records of the Board, that it may deem relevant to the proceeding.

**245:15-23-18. Findings of the Board and penalties**

- (a) The Board may find on any one or more of the charges:
  - (1) The charges are dismissed for insufficient evidence;
  - (2) The charges are dismissed without prejudice;
  - (3) The charges are dismissed with prejudice;
  - (4) The respondent is found not guilty;
  - (5) The respondent is found guilty.
- (b) If the finding is guilty, the Board shall then determine the penalty to be imposed. The penalty resulting from a finding of guilty may be one or more of the following:
  - (1) Reprimand
  - (2) Censure
  - (3) Suspension
  - (4) Revocation
  - (5) Probation
  - (6) Administrative Fine
- (c) The order of the Board in each case is a public record.

**245:15-23-19. Orders developed without a quorum**

At any hearing not heard by a majority of the members of the Board, or when the case hearing record has not been read by a majority of the members of the Board, the decision, if adverse to a party to the proceeding, shall not be made until a proposed order is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the Board. The proposed order shall be accompanied by statements of the reasons therefore and of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by a person who has read the record. The parties, by written stipulation, may waive compliance of any part of with this Section.

**245:15-23-20. Issuing of orders**

All orders, whether proposed or final, shall be issued within one hundred twenty (120) days of the conclusion of a hearing, or 30 days of receipt of order from a reviewing state officer or authority, whichever is the longer of the two.

**245:15-23-21. Final orders**

A final order adverse to a party in a proceeding shall be in writing. The final order shall be consistent with the order of the Board entered at the hearing. A final order shall include findings of fact and conclusions of law, separately stated. Parties shall be notified either personally or by mail of any order. Upon request, a copy of the order shall be delivered or mailed to each party and to the attorney of record.

**245:15-23-22. Procedures to file exceptions to proposed orders**

Exceptions to a proposed final order, together with a brief in support, shall be filed with the Executive Director within ten (10) days of the submission of the proposed final order. If exceptions are filed, the Executive Director shall set the time and place for the Board to consider the exceptions and shall cause notice of the time and place to hear the exceptions to be mailed to the licensee, person, firm, or entity or to the attorney of record. Such time shall not be less than twenty (20) days after said notice is mailed. Briefs in response to the exceptions must be filed with the Board at least seven (7) days before such meeting. The licensee, person, firm, or entity may personally or through counsel be present and present oral argument to the Board in support of the exceptions. No exceptions to the final order shall be considered without full compliance of this section by the respondent, individual, firm, or entity.

**245:15-23-23. Rehearing, reopening or reconsideration**

(a) A decision by the Board shall be subject to rehearing, reopening or reconsideration by the Board if requested in writing and filed with the Executive Director within ten (10) days from the date of filing of the Final Order with the Executive Director. The grounds for requesting such action shall be either:

- (1) newly discovered or newly available evidence relevant to the issues; or
- (2) probable error committed by the Board or hearing examiner in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order; or
- (3) need for further consideration of the issues and the evidence in the public interest; or
- (4) a showing that issues not previously considered should be examined in order to properly dispose of the matter; or
- (5) fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

(b) The order of the Board granting rehearing, reconsideration, or review of the petition of a party, shall set forth the grounds which justify such action.

**245:15-23-24. Other hearings**

When it comes to the Board's attention that persons, firms, or entities residing in or out of the State of Oklahoma may be engaged in the practice of engineering or land surveying in Oklahoma, as defined by the Statutes regulating professional engineering and land surveying and Board's current rules, and further that such person, firm, or entity may be engaged in the unauthorized practice of these professions or may not meet the requirement thereof, the Board may institute proceedings as provided in the rules against licensee, persons, firms, or entities for the purpose of determining if any violation of the law, rules or orders has occurred and may take such action as is permitted pursuant to the provisions of 59 O.S., Sections 475.1 et seq. and may, in addition, bar said licensee, person, firm, or entity concerned and their employers from licensure with the Board or the practice of engineering or land surveying within the State of Oklahoma.

**245:15-23-25. Emergency hearings and orders**

(a) If the Board shall find an emergency to exist which, in the opinion of the Board, poses an imminent danger to the public health, welfare, or safety or which threatens irreparable harm to any person, firm, or entity, the Board may order hearings as provided herein upon giving twenty-four (24) hour notice to the parties concerned, and may enter such orders as will, in the judgment of the Board, maintain or restore the public health, welfare and safety pending hearing by the Board or judicial review of the Board's actions.

(b) Whenever in the judgment of the Board any licensee, person, firm, or entity has engaged, or is about to engage, in any acts or practice which constitute, or will constitute, a violation of 59 O.S., Section 475.1 et seq., the Board may make application to the court with appropriate jurisdiction for an order enjoining such acts or practices, and upon a showing by the Board that such licensee, person, firm, or entity has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be proper shall be granted by such court, without bond.

(c) Nothing in the rules dealing with violations, penalties or findings of facts shall preclude the Board from proceeding through any legal proceedings necessary to enforce its findings, orders or administrative penalties.