Lapel's Board: Anatomy of a Complaint

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AWMA, Louisiana Section Annual Meeting
October 26, 2011
Format of Presentation

- Background info
  - LAPELS Board and Staff
  - Codes of conduct
- Compliance/Enforcement
  - Powers of the Board
  - Disciplinary Process
- Recent adjudicated cases
Donna D. Sentell
Executive Director

D. Scott Landry
Board Attorney
LAPELS
Enforcement

Justin Owens
Board Investigator

Victoria Hatton
Director of Enforcement

Tyson Ducote
Board Investigator
#7
Continue one’s professional development
Uphold the honor of the profession – zero tolerance for bribery, fraud, corruption
#5

Avoid deception in solicitation of professional employment
FUNDAMENTAL CANONS
RULES OF PRACTICE

#4

Be a faithful agent or trustee in representing employer or client
ASCE Code of Ethics

FUNDAMENTAL CANONS
RULES OF PRACTICE

#3

Public statements must be objective and truthful
ASCE Code of Ethics

FUNDAMENTAL CANONS

RULES OF PRACTICE

#2

Perform services only in area of competence
ASCE Code of Ethics

FUNDAMENTAL CANONS
RULES OF PRACTICE

#1
Maintain safety, health & welfare of the public
LAPELS Board

- **Governed by two documents:**
  - Law (LA Revised Statutes 37:681-37:703)
  - Rules of the Board (LA Administrative Code)
- **Rules are legally binding on every licensee**
- **Rules include Professional Conduct (Chapter 25)**
  - Licensees, services, conflicts of interest, improper solicitation, and conduct of advertising
- **Licensees shall hold paramount public safety**
Compliance/Enforcement Div. (1)

- Investigate complaints & manage cases
- Field phone calls from registrants/public regarding the laws and rules of the board
- Oversee the renewals of licensees to ensure compliance with CPD and status requirements – two renewal cycles annually
- Conduct two CPD audits annually – audits include at least 200 registrants per cycle
- Handle applications for those renewing an expired license
- Ensure compliance - Firm licensure
Compliance/Enforcement Div. (2)

- Make presentations to societies and various groups relating to Ethics, Laws and Rules, etc.
- Interface with state agencies regarding engineering and surveying work
- Work with board attorney and board prosecutor on informal conferences and formal hearings
- Perform ‘character and reference’ checks.
- Ensure all sanctions are met pursuant to the terms of the final Board action
- Review NCEES website for Louisiana licensees who may have been disciplined in another state
Board Statistics

• Approximately 60,000 licensees in database

• 20,000 Licensees in ACTIVE status
  
  ➢ 12,500 PE (7,000 are non residents)
  ➢ 700 PLS

  ➢ 3,000 Engineering Firms
  ➢ 300 Surveying Firms

  ➢ 3,500 Interns
LAPELS STATUTES AND RULES: HOW ARE THEY ENFORCED?

LAPELS

La. R.S. 37: 698 - 700
Board Rules Chapters 21 - 31

www.lapels.com
La. R.S. 37:698(A) authorizes the Board to take disciplinary action against licensees.

La. R.S. 37:700 (A) authorizes the Board to take disciplinary action against non-licensees.
Fraud, deceit, material misstatement, or perjury when:

- Applying for a license
- Taking an examination
- Renewing a license

Fraud, deceit, gross negligence, material misstatement, gross incompetence, or gross misconduct committed in the practice of engineering or land surveying.
Conviction of, or pleading “guilty” or “no contest” to:

- A felony or any crime of moral turpitude in any State
- Any crime in which an element is fraud or arises out of the licensee’s professional practice
- Any criminal charge under the Louisiana Campaign Finance Disclosure Act or any other campaign finance/practice law of any State
Violating any Board Rule

- Continuing education CPD requirements
- Minimum Standards (Surveying)
- Use of seals
- Supervising Professional for a Firm
Disciplinary action by another State for violations also recognized as violations by LAPELS:

- Refusal to issue or renew a license
- Revocation or suspension of license
- Unlicensed practice
- Non-payment of licensure fee
Providing false testimony before the Board

Practicing, or offering to practice, engineering or land surveying in Louisiana with an expired license

False or misleading advertisements or solicitations
Investigation/Disciplinary Procedures
How are Violations Discovered?

Two ways:

- **Provided to the Board**
  - Formal, sworn affidavit – Forms at LAPELS.com
  - Anonymously
  - Other means (email, telephone call)

- **Ascertained by Investigators**
  - Through telephone or personal interview
  - By conducting internet research
  - By reviewing documents
What Happens Next?
Investigation

- Investigation conducted
  - Information and evidence collected
Outline of Investigative Report

- Cover Page including case number and name of alleged respondent.

- Administrative data including name of respondent, date of report, case number, and alleged violation.
Outline of Investigative Report

- The body of the report contains:
  - Details, facts, and circumstances of the cases as developed during the investigation, including full names and addresses of witnesses
  - Any statements, affidavits, or evidence taken must be appended as attachments to the report
  - The report is written in numbered paragraph form reporting each interview or other investigative step separately
Complaint Review Committee (CRC)

CRC comprised of:

- three Board members
- Board attorney
- Board Executive Director
CRC Dismisses Sworn Affidavit If:

- No evidence of violation discovered
- Violation is out of Board jurisdiction
- Violation occurred more than five years prior to date of affidavit
Evidence of Violation Discovered

- CRC offers informal resolution through Consent Order

- Consent order contains:
  - Findings of Fact – It is undisputed that . . .
  - Admission – Respondent of his own free will consents . . .
  - Violations – Respondent admits to violations . . .
  - Sanctions – Respondent agrees to sanctions . . .
  - Waiver of rights to a hearing
  - It is over - . . . final and binding effect . . .
Informal Conference (Optional)

- CRC meets with Respondent - Board attorney but not board prosecutor is present
- Consent order is already drafted
- Respondent may need attorney
- Respondent discusses case
- End result can be
  - Disagreement and hearing
  - Agreement on terms of consent order
  - Change in charges with more investigation
  - Dropping charges
  - More charges
Consent Order

- If Respondent complies with the Consent Order, it goes to full Board for approval.

- Consent order must be ratified by full board.

- Ratification and compliance – CASE CLOSED

  Summary printed in “Louisiana Engineer & Surveyor Journal”
Consent Order
Formal Charges

- If Respondent does **not** comply with Consent Order, charges are preferred
  - Hearing scheduled; Respondent notified; witnesses subpoenaed

www.lapels.com
Formal Hearing

- A LAPELS hearing is court
- All evidence for case is presented in hearing. The hearing is the Respondent’s day in court.
- Rules of evidence are followed with witnesses, attorneys, examination and cross examination
- LAPELS prosecutor handles the case
Formal Hearing

- LAPELS attorney advises board during hearing process
- There is a court reporter and full transcripts are taken.
- **Complaint Review Committee** does not attend or participate in hearing. CRC may be called as witnesses.
- Full board (minus the CRC) sits at hearing and makes judgment. LAPELS members are judges for the case.
Judgment

If found guilty:

- Additional costs assessed
- Fines may increase
- License may be revoked
- Matter may be referred to District Attorney for further litigation
Appeal

- Respondent may appeal judgment of LAPELS to Louisiana court of appeals

- Ultimate court is Louisiana Supreme Court

- They will only review record of hearing. All evidence has already been introduced.
Enforcement Case Overview

- Enforcement Cases as of September 2011:
  - Usually currently Open – 60-80

- LAPELS had 2 Formal Hearings last year.

- Numerous informal conferences

- LAPELS finalized appeals on one case last year.
Example Consent Order 1

- **#2010-X1**: Consent Order issued to a licensed engineering firm who admitted to practicing and offering to practice on an expired license for 1 year, 2 weeks
  
  {LA. R.S. 37:698(A)(9) & (16)}

- Admission appeared on application to renew its expired license.

<table>
<thead>
<tr>
<th>Terms of Consent Order</th>
<th>Sanction Received</th>
<th>Disciplinary Guidelines Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine of $1,000</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Costs of $233.29</td>
<td>✓</td>
<td></td>
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<tr>
<td>Past unpaid renewal fees of $180</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Laws &amp; Rules Quiz completed by firm’s supervising professional</td>
<td></td>
<td></td>
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<tr>
<td>Publication by name on LAPELS’ website and Journal</td>
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<td></td>
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<tr>
<td>Report to NCEES by name</td>
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Example Consent Order 2

**#2009-X2**: Consent Order issued to a licensed engineer who (a) practiced and/or offered to practice on an expired license for over 8 years and (b) aided or his licensed engineering firm in practicing and/or offering to practice without a supervising professional and in providing false information when renewing its license.

{LA. R.S. 37:698(A)(9),(12)&(16)}:

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<tr>
<td>Fine of $5,000.00</td>
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</tr>
<tr>
<td>Costs of $413.88</td>
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</tr>
<tr>
<td>Cease &amp; desist practicing of and/or offering to practice engineering in Louisiana until such time as he renews his expired license</td>
<td>✔</td>
<td></td>
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<tr>
<td>Past unpaid renewal fees of $645.00</td>
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<tr>
<td>Laws &amp; Rules Quiz</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Professionalism &amp; Ethics Quiz</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Provide CPD Log with supporting documentation</td>
<td>✔</td>
<td></td>
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Case Study #1

- Licensed P.E. reported to the Board by the Louisiana State Fire Marshal
  - Engineered construction drawings, containing seal of licensee, submitted for permitting
Case Study #1

- Drawings were created by an unlicensed individual not under licensee’s supervision

- Drawings were inadequate
  - Contained multiple defects
  - Not in compliance with building codes
  - Not in compliance with life safety codes
  - Missing mechanical drawings for heating, ventilation, and plumbing
Case Study #1

- Licensee notified of evidence in Board’s possession
  - Licensee admitted he had sealed plans drawn by unlicensed person after reviewing and making some adjustments

- Consent Order offered to licensee
  - Licensee did not accept Consent Order
  - Licensee did not request informal conference
Case Study #1

- **Charges preferred by Board**
  - the Board found licensee guilty of violating:
    - §2503(C) of the Board’s administrative code
      - Licensees may only sign & seal design documents which conform to applicable laws and ordinances
    - §2505(C) of the Board’s administrative code
      - Licensees are prohibited from signing & sealing documents not prepared under their responsible charge
    - §2701(A)(3) of the Board’s administrative code
      - Licensees must exercise responsible charge over design document preparation from start to finish
Case Study #1

- Sanctions levied against licensee:
  - 18-month suspension of P.E. license
  - Costs incurred by Board in connection with case
  - $5,000 Fine
  - Score 90% or higher on Board’s online Professionalism and Ethics Examination
  - Score 90% or higher on Board’s online Laws & Rules Examination
  - Complete 30 PDHs related to building system design