

LAPELS BOARD: ANATOMY OF A COMPLAINT

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Format of Presentation

- ⦿ Background info
 - LAPELS Board and Staff
 - Codes of conduct
- ⦿ Compliance/Enforcement
 - Powers of the Board
 - Disciplinary Process
- ⦿ Recent adjudicated cases

Shreveport



West Monroe

LAPELS BOARD MEMBERS

Pineville



Alexandria

Lake Charles



Lafayette



Baton Rouge



Houma



New Orleans

Donna D. Sentell
Executive Director



LAPELS - STAFF

D. Scott Landry
Board Attorney





Justin Owens
Board Investigator



Victoria Hatton
Director of Enforcement



Tyson Ducote
Board Investigator

LAPELS

Enforcement

ASCE Code of Ethics

FUNDAMENTAL CANONS RULES OF PRACTICE

#7

**Continue one's professional
development**

FUNDAMENTAL CANONS RULES OF PRACTICE

#6

**Uphold the honor of the
profession – zero tolerance
for bribery, fraud, corruption**

ASCE Code of Ethics

FUNDAMENTAL CANONS RULES OF PRACTICE

#5

**Avoid deception in solicitation
of professional employment**

ASCE Code of Ethics

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

Powers of the Board

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

- ① Cover Page including case number and name of alleged respondent.
- ① 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

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.

Terms of Consent Order	Sanction Received	Disciplinary Guidelines Variance
Fine of \$1,000	✓	
Costs of \$233.29	✓	
Past unpaid renewal fees of \$180	✓	
Laws & Rules Quiz completed by firm's supervising professional		
Publication by name on LAPELS' website and Journal		
Report to NCEES by name		

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)}:

Terms of Consent Order	Sanction Received	Disciplinary Guidelines Variance
Fine of \$5,000.00	✓	
Costs of \$413.88	✓	
Cease & desist practicing of and/or offering to practice engineering in Louisiana until such time as he renews his expired license		
Past unpaid renewal fees of \$645.00	✓	
Laws & Rules Quiz	✓	
Professionalism & Ethics Quiz	✓	
Provide CPD Log with supporting documentation	✓	
Publication by name on LAPELS' website & Journal		
Report to NCEES by name		

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