

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

BEFORE THE PROFESSIONAL ENGINEER SECTION

OF THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS
AND LAND SURVEYORS

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

GARY P. GRUNAU, P.E.

Respondent

ORDER DENYING PETITION

On January 12, 2001, the Professional Engineer Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (board) issued its Final Decision and Order in the captioned matter. The board's Order was based upon a Stipulation executed by the respondent, Gary P. Grunau (Mr. Grunau) and Steven M. Gloe, attorney with the Division of Enforcement.

The stipulated Order recited that Mr. Grunau had been disciplined by the Florida Board of Professional Engineers (Florida board) on December 30, 1999, by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors on July 14, 2000 (based upon the discipline in Florida), and again by the Florida board on September 27, 2000.

The December 30, 1999 Order of the Florida board, which was stipulated, was based upon an administrative complaint filed against Mr. Grunau by the Florida board alleging that he had offered engineering services through a corporation which had not been issued a certificate of authorization to offer engineering services, and that he had attached his engineering seal to engineering plans which had not been prepared by him or under his direction and control. Mr. Grunau was fined \$2000, was reprimanded, was placed on probation for one year, was required to complete a study guide of statutes and rules of the Florida board, and was required within one year to complete an approved course in engineering professionalism and ethics.

The July 14, 2000, disciplinary order by the Florida board was also stipulated, and was based upon a complaint alleging that Mr. Grunau had again practiced engineering in Florida without a certificate of authorization, and that he had engaged in negligence, incompetence or misconduct in the practice of engineering by signing and sealing a fire protection project plan which contained four deficiencies. Mr. Grunau was again reprimanded, placed on probation for one year, and was required after six months and after one year to submit to the Florida board a list of projects he had completed within the previous six months for review by the Florida Board. Based upon the Florida board's review of two of the projects completed by him, the Florida board issued a third complaint against Mr. Grunau alleging negligence in practice based upon alleged deficiencies in the projects reviewed. That complaint was pending at the time of the board's consideration of the Petition herein.

The Wisconsin Order reprimanded Mr. Grunau, and required that he maintain compliance with the terms of the Florida Orders. He was also required to arrange for reports on a quarterly basis from the Florida board on the status of his compliance with the terms and conditions of his professional engineer license in that state.

On July 13, 2001, the board considered evidence that Mr. Grunau had failed to comply with the Wisconsin Order and, pursuant to paragraph 3 of the board's Order, Mr. Grunau's license was suspended. That paragraph reads as follows:

3. Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Section in its discretion may in the alternative deny a stay of suspension of the license or impose additional conditions and limitations and/or other additional discipline for a violation of any of the terms of this Order.

The board's Order suspending the license was affirmed by the board in February, 2002.

On July 5, 2002, Mr. Grunau, by Attorney Robert A. Mich, Jr., of Kay & Andersen, S.C., filed his Petition to Vacate and Set Aside Order Imposing Suspension. The Petition states as grounds for vacating the January 12, 2001, Final Decision and Order the following:

The third and newest Florida complaint exceeds the Florida board's authority because the second Florida Order provided for review of one project on which Mr. Grunau worked, while the Florida board in fact reviewed two projects. Moreover, because the period of probation in the second complaint was to run concurrently with the period of probation in the first order, the investigation leading to the filing of the third complaint was carried out after the period of probation was to terminate and was therefore untimely.

The Orders issued by both the Florida board and the Kentucky board made no findings of misconduct other than noting that the Florida allegations, if proven, would constitute a violation of the laws of Florida and of Kentucky.

Disposition of this case in Wisconsin by Stipulation exceeds the board's authority because Wisconsin statutes do not contemplate stipulated resolutions except for "contested cases," and this was not a contested case because the proceeding in this matter was not consistent with the statutory definition of that term.

The finding of violation set forth in the Wisconsin Order cites § A-E 8.03(3). Subsection (a) of that provision states that misconduct includes "Violation of federal or state laws, local ordinances or administrative rules relating to the practice of . . . professional engineering" Because neither Florida nor Kentucky found a violation, the cited section is inapplicable.

Grounds for vacating the October 15, 2001 Order Imposing Suspension included the following:

The January 12, 2001 Final Decision and Order exceeded the board's authority for the reasons set forth above.

Mr. Grunau acted in good faith by contacting the Florida board through his attorney to request a statement reflecting his compliance with the Florida order.

Mr. Grunau has no control over the Florida board and could not compel them to respond to the Wisconsin Order.

Mr. Grunau's license has not been suspended in Kentucky or Florida, and it is an abuse of discretion for the Wisconsin board to do so based on unproved allegations in Florida.

Mr. Mich appeared before the Engineer Section of the board on July 12, 2002, in support of the Petition, and the board considered the matter on that date.

Based upon the Petition, and upon other information of record herein, the board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that respondent's Petition to Vacate and Set Aside Order Imposing Suspension be, and hereby is, denied.

IT IS FURTHER ORDERED that Mr. Grunau may renew his petition at such time as he comes into compliance with the Wisconsin Final Decision and Order or when he is able to demonstrate that his problems with the Florida board have been resolved.

DISCUSSION

Respondent cites § 227.44(5), Stats., as authority for his proposition that the stipulated Order in this case exceeded the board's authority. That provision states in relevant part that "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." Section 227.01(3), Stats., defines "contested case" as follows:

(3) "Contested case" means an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order.

Respondent's argument is that the proceeding in question was not a "contested case" because no complaint had been filed, and the board has no authority to adopt a stipulation that does not arise from a contested case. To the board's knowledge, no one has ever before suggested that the department and the licensing boards do not have authority to settle cases by stipulation prior to filing a formal complaint. The great majority of investigations into misconduct by licensees of this and the other licensing boards are resolved through stipulation, and a good share of those are resolved through stipulations executed prior to filing a formal complaint. In any event, respondent's argument proves too much. If a "contested case" does not exist unless all the elements of the definition are present, then a stipulation may not be resolved by stipulation until a hearing has been held and a decision and order have been issued. That is an absurd result, and "[I]t is a fundamental rule of statutory construction that any result that is absurd or unreasonable must be avoided." *State ex rel. Reimann v. Circuit Court for Dane County*, 214 Wis.2d 604, 571 N.W.2d 385, 391 (1997). Certainly, one of the requirements for a contested case is that a substantial interest of a party has been adversely affected by a decision and order issued after a hearing. It doesn't follow, however, that a formal complaint must be issued prior to settling the case through stipulation.

It should also be noted that the department's rules clearly anticipate that stipulations may be executed prior to the filing of a formal complaint. Section RL 2.12, Code, states as follows:

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or

informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.[\[1\]](#)

Respondent's other principal argument is that the board exceeded its authority by finding a violation of the Wisconsin rules of conduct when neither the Kentucky nor the Florida boards found a violation of their statutes and rules. Rather, those board's found that their laws would be violated if the alleged conduct by respondent were proven.

The orders issued by the Kentucky and Florida boards resulted from stipulations just as the Wisconsin Decision and Order did. Stipulations involve compromise, and the compromise reached in the other two states obviously involved an agreement by Mr. Grunau to accept board sanctions in return for the Florida and Kentucky boards' agreements not to make findings of violation. Had Mr. Grunau made the argument in negotiating the Wisconsin Stipulation that no finding of violation should be made based on the manner in which the Florida and Kentucky orders were drafted, it is entirely possible that the Wisconsin stipulation could have been similarly drafted. It is not unusual for stipulations adopted by Wisconsin licensing boards to omit such findings. Whether the stipulated Order made a finding of violation or not, however, misses the point. The point is that Mr. Grunau stipulated and agreed to arrange for quarterly reports from the Florida board on the status of his compliance with that board's Order, and he failed to do that. Respondent argues that Mr. Grunau in effect complied with the board's Order because his Florida attorney sent a letter of request to the Florida board. He further argues that he should not be held responsible for failure of the Florida board to respond because he has no power to require that board to respond. That Mr. Grunau made any effort at all to comply with the board's Order prior to the suspension would have been news to the board, as he completely failed to respond to numerous inquiries regarding the required reports made prior to the board's action. That action to invoke the summary suspension provision of the Order was therefore necessary and appropriate.

It seems unfortunate that Mr. Grunau would attempt to discredit the Final Decision and Order that he agreed to rather than to take those steps necessary to comply with that Order. It is not too late to comply with the board's Order, however, and Mr. Grunau is welcome to petition the board for reinstatement at such time as he comes into compliance, or when he can demonstrate that his problems with the Florida board have been resolved.

Finally, one other issue was raised by respondent which is not directly relevant to the Petition at hand. Respondent requested that both the presentation of the Petition and the board's deliberation on the matter be conducted in open session. The request that the Petition be heard in open session was granted; the request that the matter be considered in open session was not. The relevant provision of the open meetings law is found at § 19.85(1)(b), Stats., which reads as follows:

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

* * * *

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or

meeting where the employee or person licensed requests that an open session be held.

Respondent reads this provision as granting the right to a licensee to demand not only that an evidentiary hearing or meeting be conducted in open session, but that board's deliberations and formal action be conducted in open session. The provision clearly requires that, in its own words, "The notice [of any evidentiary hearing] shall contain a statement that the person has a right to demand that the evidentiary hearing or meeting be held in open session." It is equally clear that the board's deliberations leading to its formal action in a licensee discipline matter is not included within that requirement. Rather it is the governmental body which has the authority to determine whether the deliberative process in such a matter is carried out in open or closed session. See *State ex rel. Bilder v. Delevan Tp.*, 112 Wis.2d 539, 558 (1983) 334 N.W.2d 252.

Date this 24th day of July, 2002.

PROFESSIONAL ENGINEER SECTION OF THE STATE OF WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS

Lynda F. Farrar

Chair

[\[1\]](#) An informal complaint is the document received from a consumer pursuant to which an investigation is conducted.