Trials and Tribulations

Case Studies at the
Indiana State Board of Registration
for Professional Surveyors

2015 ISPLS Convention

Indianapolis, Indiana
January 14, 2015

Why This Program?

1. Confusion about complaints
2. Misinformation about complaints
3. Lack of understanding about complaints
4. Lack of Communication from the Board
5. Ultimately – Improve the practice of Land Surveying in Indiana and help you be a better surveyor
Agenda

Introductory Comments
I. Basis for filing a complaint/charges
   A. Indiana Code (Statutes)
   B. Administrative Rules
II. Complaint Procedures
III. Settlement Procedures
IV. Prosecution and Hearings
V. Sanctions
VI. Appeals and Judicial Review
VII. Reinstatement
VIII. Continuing Education Violations
IX. Staffing
X. Complaint Process – Flowchart
XI. Typical Timeline
XII. Current Statistics
XIII. Number and Nature of Recent Complaints
XIV. Case Studies
Preliminary Comments

1. Board meetings are open to the public
2. Being cognizant of privacy
3. Please participate!
   a. Contribute to the dialogue
   b. Ask questions

Statistics
(as of 10/15/14)

825 active Indiana Professional Surveyor Licenses
(871 as of 1/31/2014)
(852 as of 1/31/2013)

694 active in-state licenses
(676 in-state as of 1/31/2013)
Basis for a Filing a Complaint/Charges or Issuing Sanctions

I.C. 25-1-11
“Professional Licensing Standards of Practice”
Sec. 5. (a) A practitioner shall comply with the standards established by the board regulating a profession. A practitioner is subject to the exercise of the disciplinary sanctions under section 12 of this chapter if, after a hearing, the board finds that:

1) a practitioner has:
   (A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;
   (B) engaged in fraud or material deception in the course of professional services or activities;
IC 25-1-11-5
Practitioner compliance...

(C) advertised services or goods in a false or misleading manner; or
(D) been convicted of a crime or assessed a civil penalty involving fraudulent billing practices;

IC 25-1-11-5
Practitioner compliance...

(2) a practitioner has been convicted of a crime that:
(A) has a direct bearing on the practitioner's ability to continue to practice competently; or
(B) is harmful to the public;
(3) a practitioner has knowingly violated a state statute or rule or federal statute or regulation regulating the profession for which the practitioner is licensed;

(4) a practitioner has continued to practice although the practitioner has become unfit to practice due to:
(A) professional incompetence, including undertaking professional activities that the practitioner is not qualified by training or experience to undertake;
(B) failure to keep abreast of current professional theory or practice;
(C) physical or mental disability; or
(D) addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;

(5) a practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;
(6) a practitioner has allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual or business who renders services beyond the scope of that individual's or business's training, experience, or competence;
IC 25-1-11-5
Practitioner compliance...

(7) a practitioner has had disciplinary action taken against the practitioner or the practitioner's license to practice in any state or jurisdiction on grounds similar to those under this chapter;

(8) a practitioner has assisted another person in committing an act that would constitute a ground for disciplinary sanction under this chapter;

(9) a practitioner has allowed a license issued by a board to be:
(A) used by another person; or
(B) displayed to the public when the license has expired, is inactive, or has been revoked or suspended; or

(10) a practitioner has failed to comply with an order imposing a sanction under section 12 of this chapter.
(b) If an applicant or a practitioner has engaged in or knowingly cooperated in fraud or material deception to obtain a license to practice, including cheating on the licensing examination, the board may rescind the license if it has been granted, void the examination or other fraudulent or deceptive material, and prohibit the applicant from reapplying for the license for a length of time established by the board.

I.C. 25-21.5
“Professional Surveyors”
IC 25-21.5-2-14
Enforcement and administration of article; adoption of rules

(b) The board shall adopt rules under IC 4-22-2 that are reasonably necessary to implement this article, including for the administration of the professional surveyor and surveyor intern investigative fund established under IC 25-21.5-11-4, and establish standards for the competent practice of land surveying.

IC 25-21.5-13-1
Filing charges

Sec. 1. A person may file charges of fraud, deceit, gross negligence, incompetency, or unprofessional conduct against a registrant by presenting specific written charges verified by an affidavit that makes definite and specific charges of the facts against the holder of a certificate of registration under IC 25-1-7.
IC 25-21.5-13-2
Penalties

Sec. 2. A person who:
(1) engages in, or offers to engage in, the practice of land surveying without being registered or exempted under Indiana law;
(2) presents as the person's own the certificate of registration or the seal of another;
(3) gives false or forged evidence of any kind to the board or to a board member in obtaining a certificate of registration;
(4) impersonates any other registrant;
(5) uses an expired, a suspended, or a revoked certificate of registration; or
(6) otherwise violates this article; commits a Class B misdemeanor.
I.C.25-1-11-9

“Engineers or land surveyors; grounds for disciplinary sanctions”

Sec. 9. A practitioner registered as an engineer or a land surveyor is subject to the disciplinary sanctions under section 12 of this chapter if, after a hearing, the board finds that the practitioner:
IC 25-1-11-9
Grounds for disciplinary sanctions...

(1) has permitted the practitioner's seal to be affixed to plans, specifications, or drawings not prepared by the practitioner or under the practitioner's personal supervision by the practitioner's regularly employed subordinates;
(2) has used the title "architect" or advertised to practice architecture and is not registered under IC 25-4-1.

I.C. 25-1-1.1
“Effect of Criminal Convictions on Licensed or Registered Persons”
I.C. 25-1-1.2

“Effect of Delinquency in Child Support Payments on Licensed or Registered Persons”

I.A.C. Title 865

“State Board of Registration for Professional Surveyors”
865 IAC 1-10-1
Ethical, economic, and legal principles; professional incompetence

Sec. 1. (a) This rule establishes requirements concerning ethical, economic, and legal principles and unprofessional conduct in the practice of land surveying.

(b) The failure of a registered land surveyor to comply with the provisions of this rule constitutes professional incompetence.
865 IAC 1-10-2 - Agreement to abide by IC 25-21.5 and rules
865 IAC 1-10-3 - Privilege to practice; responses to board pertaining to professional conduct
865 IAC 1-10-4 - Public safety, health, and welfare
865 IAC 1-10-5 - Qualification to undertake assignment
865 IAC 1-10-6 - Restricted services for assignment outside field of competence

865 IAC 1-10-7 - Use of seal restricted
865 IAC 1-10-8 - Professional reports; statements and testimony
865 IAC 1-10-9 - Expert opinion testimony
865 IAC 1-10-10 - Public policy statements; criticisms or arguments
865 IAC 1-10-12 - Disclosure of conflict of interest
865 IAC 1-10-13 - Compensation from more than one party for same project
865 IAC 1-10-14 - Gratuities prohibited
865 IAC 1-10-15 - Financial or other considerations from suppliers prohibited
865 IAC 1-10-16 - Public service position; conflict of interest
865 IAC 1-10-17 - Public contracts; conflict of interest
865 IAC 1-10-18 - Payment of consideration to secure work prohibited; exception

865 IAC 1-10-19 - Employment on basis of qualification and competence
865 IAC 1-10-20 - Misrepresentation of qualifications prohibited
865 IAC 1-10-21 - Use of name in fraudulent or dishonest venture
865 IAC 1-10-25 - Revocation or suspension of license in another jurisdiction; effect
865 IAC 1-12-1
Land Surveying; Competent Practice

Sec. 1. (a) This rule establishes minimum standards for the competent practice of land surveying as required by IC 25-21.5-2-14.
(b) The failure of a registered land surveyor to comply with the provisions of this rule may subject the registered land surveyor to sanctions as provided in IC 25-1-11.

Complaint Procedures
I.C. 25-1-7

“Investigation and Prosecution of Complaints Concerning Regulated Occupations”

IC 25-1-7-2

Duties of attorney general

Sec. 2. The office of the attorney general, under the conditions specified in this chapter, may receive, investigate, and prosecute complaints concerning regulated occupations.
IC 25-1-7-3
Investigation of Complaints

Sec. 3. (a) Except as provided in subsection (b), the division [of consumer protection of the Indiana Attorney General’s Office] is responsible for the investigation of complaints concerning licensees. (b) [deals with medical licensing complaints]

IC 25-1-7-4
Complaints; Requisites; Standing

Sec. 4. All complaints must be written and signed by the complainant and initially filed with the director [of the division of consumer protection].
IC 25-1-7-4
Complaints; Requisites; Standing

…Except for employees of the attorney general's office acting in their official capacity, a complaint may be filed by any [individual, partnership, limited liability company, or corporation], including members of any of the boards listed in section 1 of this chapter.

IC 25-1-7-5
Duties and power of director

Sec. 5. (a) Subsection (b)(1) does not apply to:
(1) a complaint filed by:
    (A) a member of any of the boards listed in section 1 of this chapter; or
    (B) the Indiana professional licensing agency; or
(2) a complaint filed under IC 25-1-5-4.
Sec. 5. … (b) Except as provided in section 3(b) of this chapter, the director [of the division of consumer protection] has the following duties and powers:

(1) The director shall make an initial determination as to the merit of each complaint. A copy of a complaint having merit shall be submitted to the board having jurisdiction over the licensee’s regulated occupation, that board thereby acquiring jurisdiction over the matter except as otherwise provided in this chapter.
IC 25-1-7-5
Duties and power of director

(2) The director shall, through any reasonable means, notify the licensee of the nature and ramifications of the complaint and of the duty of the board to attempt to resolve the complaint through negotiation.

(3) The director shall report any pertinent information regarding the status of the complaint to the complainant.

(4) The director may investigate any written complaint against a licensee. The investigation shall be limited to those areas in which there appears to be a violation of statutes governing the regulated occupation.
IC 25-1-7-5
Duties and power of director

(5) The director has the power to subpoena witnesses and to send for and compel the production of books, records, papers, and documents for the furtherance of any investigation under this chapter.

The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the director.

I.C. 25-1-7-10
Confidentiality of Complaints
Confidentiality of complaints and information

Sec. 10. (a) Except as provided in section 3(b) of this chapter, all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

(b) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:
(1) under law; or
(2) for the advancement of an investigation.
Settlement Procedures

I.C. 25-1-7-6
Settlement Proceedings
IC 25-1-7-6
Statement of settlement; period to resolve

Sec. 6. ...(b) If, at any time before the director files the director's recommendations with the attorney general, the board files with the director a statement signed by the licensee and the complainant that the complaint has been resolved, the director shall not take further action.

IC 25-1-7-6
Statement of settlement; period to resolve

For a period of thirty (30) days after the director has notified the board and the licensee that a complaint has been filed, the division shall not conduct any investigation or take any action whatsoever, unless requested by the board.
IC 25-1-7-6
Statement of settlement; period to resolve

If, during the thirty (30) days, the board requests an extension of the thirty (30) day time period, the director shall grant it for a period not exceeding an additional twenty (20) days.

IC 25-1-7-6
Statement of settlement; period to resolve

If at any time during the thirty (30) day period or an extension thereof, the board notifies the director of its intention not to proceed further to resolve the complaint, the division may proceed immediately under this chapter.
IC 25-1-7-6
Statement of settlement; period to resolve

For every purpose of this section, a board may designate a board member [(Board Liaison)] or staff member to act on behalf of or in the name of the board.

Prosecution and Hearings
IC 25-21.5-12-1
Procedures; disciplinary proceedings

Sec. 1. The procedures under IC 4-21.5 govern the board's procedures for conducting disciplinary hearings and issuing subpoenas for witnesses and other evidence.

IC 25-21.5-13-3
Legal advisor; use of investigative fund

Sec. 3. (a) The attorney general shall act as the legal advisor for the board and provide any legal assistance necessary to carry out this article.
IC 25-21.5-13-3
Legal advisor; use of investigative fund

(b) The attorney general and the licensing agency may use the professional surveyor and surveyor intern investigative fund established by IC 25-21.5-11-4 to hire investigators and other employees to enforce the provisions of this article and to investigate and prosecute violations of this article.

I.C. 25-1-7-7
Prosecution and Hearings
IC 25-1-7-7
Disciplinary sanctions; report to attorney general; prosecution; hearing officer

Sec. 7. (a) If there has been no statement of settlement filed by the board under section 6 of this chapter, and if, after conducting an investigation, the director believes that the licensee should be subjected to disciplinary sanctions by the board of his regulated occupation, then he shall so report to the attorney general.

Upon receiving the director's report, the attorney general may prosecute the matter, on behalf of the state of Indiana, before the board. The board may designate any person as a hearing officer to hear the matter.
IC 25-1-7-7
Disciplinary sanctions; report to attorney general; prosecution; hearing officer

(b) Notwithstanding subsection (a) of this section, if the board by majority vote so requests, the attorney general shall prosecute the matter before the board, on behalf of the state of Indiana.

IC 25-1-7-8
Witnesses

Sec. 8. At the hearing, the board or hearing officer may call witnesses in addition to those presented by the state or the licensee.
I.C. 25-1-7-9
Disqualification of Board Members

Sec. 9. A board member is disqualified from any consideration of the case if the board member filed the complaint or participated in negotiations regarding the complaint.
IC 25-1-7-9
Disqualification of board member

The board member is not disqualified from the board's final determination solely because the board member was the hearing officer or determined the complaint and the information pertaining to the complaint was current significant investigative information.

Sanctions
Sec. 12. (a) The board may impose any of the following sanctions, singly or in combination, if the board finds that a practitioner is subject to disciplinary sanctions under sections 5 through 9 of this chapter:

(1) Permanently revoke a practitioner's license.

(2) Suspend a practitioner's license.
(3) Censure a practitioner.
(4) Issue a letter of reprimand.

(5) Place a practitioner on probation status and require the practitioner to:
(A) report regularly to the board upon the matters that are the basis of probation;
(B) limit practice to those areas prescribed by the board;
(C) continue or renew professional education approved by the board until a satisfactory degree of skill has been attained in those areas that are the basis of the probation;
(D) perform or refrain from performing any acts, including community restitution or service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner; or

(E) satisfactorily complete a quality review (before July 1, 2012) or peer review (after June 30, 2012) specified by the board as a condition for termination of probationary status if the practitioner is a licensee (as defined in IC 25-2.1-1-8).
(6) Assess a civil penalty against the practitioner for not more than one thousand dollars ($1,000) for each violation listed in sections 5 through 9 of this chapter except for a finding of incompetency due to a physical or mental disability.

(7) Order a practitioner to pay consumer restitution to a person who suffered damages as a result of the conduct or omission that was the basis for the disciplinary sanctions under this chapter.
IC 25-1-11-12
Sanctions for violations...

(b) When imposing a civil penalty under subsection (a)(6), the board shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the civil penalty within the time specified by the board, the board may suspend the practitioner's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a civil penalty.

(c) Whenever the board issues a probationary license, the board may require a licensee to do any of the following:
(1) Report regularly to the board upon the matters that are the basis of the discipline of the other state or jurisdiction.
(2) Limit practice to the areas prescribed by the board.
IC 25-1-11-19
Issuing a probationary license...

(3) Continue or renew professional education requirements.
(4) Engage in community restitution or service without compensation for the number of hours specified by the board.
(5) Perform or refrain from performing an act that the board considers appropriate to the public interest or to the rehabilitation or treatment of the applicant.

I.C.25-1-11-13
“Summary license suspension...”
Sec. 13. (a) The board may summarily suspend a practitioner’s license for ninety (90) days before a final adjudication or during the appeals process if the board finds that a practitioner represents a clear and immediate danger to the public’s health, safety, or property if the practitioner is allowed to continue to practice.

The summary suspension may be renewed upon a hearing before the board, and each renewal may be for not more than ninety (90) days.
I.C. 25-21.5-11-1

Unauthorized practice

Sec. 1. The attorney general, the prosecuting attorney of a county, the board, or a citizen of a county where a person who is not exempted or a professional surveyor engages in the practice of land surveying may file an action in the name of the state of Indiana to prohibit the person from engaging in the practice of land surveying until a certificate of registration is secured or renewed under this article.
IC 25-1-7-14

Cease and desist orders – unlicensed practice

Sec. 14. (a) Notwithstanding any other law, if the board of a regulated occupation believes that a person who is not licensed, certified, or registered under this title is engaged in or is believed to be engaged in activities for which a license, certification, or registration is required under this title, the board may do the following:
IC 25-1-7-14
Cease and desist orders

(1) File a complaint with the attorney general, who shall investigate and may file:
(A) with notice; or
(B) without notice, if the attorney general determines that person is engaged in activities that may affect an individual's health or safety;
a motion for a cease and desist order with the appropriate board.

IC 25-1-7-14
Cease and desist orders

(2) Upon review of the attorney general's motion for a cease and desist order, the board may issue an order requiring the affected person to show cause why the person should not be ordered to cease and desist from such activities. The show cause order must set forth a time and place for a hearing at which the affected person may appear and show cause as to why the person should not be subject to licensing, certification, or registration under this title.
IC 25-1-7-14
Cease and desist orders

(b) If the board, after a hearing, determines that the activities in which the person is engaged are subject to licensing, certification, or registration under this title, the board may issue a cease and desist order that must describe the person and activities that are the subject of the order.

IC 25-1-7-14
Cease and desist orders

(c) A hearing conducted under this section must comply with the requirements under IC 4-21.5.
(d) A cease and desist order issued under this section is enforceable in the circuit or superior courts. A person who is enjoined under a cease and desist order and who violates the order shall be punished for contempt of court.
IC 25-1-7-14

Cease and desist orders

(e) A cease and desist order issued under this section does not relieve any person from criminal prosecution.

I.C.25-1-11-16

“Consistency of sanctions”
Sec. 16. The board shall seek to achieve consistency in the application of sanctions authorized in this chapter. Significant departures from prior decisions involving similar conduct must be explained in the board's findings or orders.

I.C.25-1-11-18

“Costs, practitioners subject to sanctions”
Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. ...
Sec. 17. (a) Except as provided in subsection (b), a practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license.

(b) The board may not approve the surrender of a practitioner's license under subsection (a) if the office of the attorney general:
(1) has filed an administrative complaint concerning the practitioner's license; and
(2) opposes the surrender of the practitioner's license.
An applicant who is aggrieved by a decision of the board under this section is entitled to hearing and appeal rights under the Indiana administrative rules and procedures act (IC 4-21.5).

(c) A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action under subsection (a)(7).
IC 25-21.5-13-4
Judicial review

Sec. 4. An applicant or a registrant who is aggrieved by an order or determination of the board is entitled to a judicial review under IC 4-21.5-5.

Reinstatement
Sec. 14. The board may reinstate a license that has been suspended under this chapter if, after a hearing, the board is satisfied that the applicant is able to practice with reasonable skill, safety, and competency to the public. As a condition of reinstatement, the board may impose disciplinary or corrective measures authorized under this chapter.

Sec. 15. The board may not reinstate a license that has been revoked under this chapter. An individual whose license has been revoked under this chapter may not apply for a new license until seven (7) years after the date of revocation.
IC 25-1-11-19
Removal of Probationary Status

(d) The board shall remove any limitations placed on a probationary license under this section if the board finds after a public hearing that the deficiency that required disciplinary action has been remedied.

IC 25-1-11-12
Sanctions for violations...

(c) The board may withdraw or modify the probation under subsection (a)(5) if the board finds after a hearing that the deficiency that required disciplinary action has been remedied or that changed circumstances warrant a modification of the order.
Continuing Education violations

I.C. 25-1-4-5 through I.C. 25-1-4-7

Continuing Education Statute Non-compliance and
• Practitioner has 21 days to respond to notice of non-compliance
• Conditional license will be issued
• $1000 fine
• Acquire necessary hours within 6 months
• Suspension if hours are not earned in 6 months
• $5000 fine for intentional violation
• Renewal denied if no compliance with previous order
• Hours required for non-compliance cannot be otherwise used

Staffing
Gordon White, Esq.  
Staff Attorney from Attorney General’s Office assigned to advise the Land Surveyor Board (4 years)  

James Schmidt (previous 17 years)  

Natalie Stidd, Esq.  
Deputy Attorney General for the Licensing Enforcement and Homeowner Protection unit of Attorney General’s Office representing the State of Indiana in hearings before the Land Surveyor Board  

(Numerous previous DAG’s)
Audrea Racine
Case Analyst with Licensing Enforcement and Homeowner Protection unit of Attorney General's Office

(Numerous previous case analysts)

Gary Kent
Liaison to the Attorney General’s Office from the Board of Registration (since July 2010)

Previous Liaisons:
• Mike DeBoy (November 2006-July 2010)
• Ross Holloway (?? –November 2006)
• Randall Miller (?? - ??)
• John Schneider (??-??)
• ??
Complaint Process
~Flowchart~

Typical Timeline
- Complaint filed
- Reviewed by Deputy Director and assigned to DAG.
- Respondent receives notice and has 20 days to respond
- DAG reviews and assigns to Analyst
- Analyst collects evidence and prepares “Board Summary”

- Board summary submitted to Board Liaison for review/input
- Deputy Director reviews and complaint is either closed or charges are filed and the complaint turns into Litigation File.
  - a few weeks (ideally) to 5 years (in the past)
- Administrative Complaint is drafted and filed with the Board (2 weeks?)
- Settlement Hearing
  • 1-2 months to set
- Proposed settlement written up and signed by both parties
  • about 1 month
- Proposed Settlement Considered by Board
  • up to 3 months
- If not approved, add at least 4 more months

- If no Settlement reached, set Hearing date
  • at least 1 month
- Respondent’s Attorney requests 1 continuance
  • at least 3 more months
- Hearing held (full Board)
- Decision made, order prepared and sent to Respondent
  • about 1 month
- Respondent disputes order
  • Judicial Review (add 1-3 years)

OR

- Hearing held (Administrative Law Judge)
- Recommended decision prepared for full Board’s consideration
  • At least 3 months
- Board approves or rejects recommendation OR
- Respondent or State objects to ALJ recommendation
  • Set Hearing date (see previous slide)
If notices are ignored by the Respondent and he/she never even appears before the Board, statutory requirements regarding dates, notices and required hearings can stretch the eventual action out to several years.

Primary influences on timeframes

- Staffing and priorities at the A.G.’s Licensing Enforcement and Homeowner Protection Unit of the Consumer Protection Division (e.g., Appraisers)
- Respondent ignores notices
- Respondent or his/her attorney is uncooperative
- Continuances
- Appeals/Judicial review
Current Statistics
(as of January 2015)

The Schneider Corporation

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