

THE JUDICIAL REVIEW OF DISCIPLINARY ACTION OF THE EXAMINING  
BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL  
ENGINEERS, DESIGNERS AND LAND SURVEYORS

The practice of professional engineering is defined by Section 443.01(6) of the Wisconsin Statutes as follows:

- (6) “Practice of professional engineering” includes any professional service requiring the application of engineering principles and data, in which the public welfare or the safeguarding of life, health or property is concerned and involved, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction, alteration, or operation, in connection with any public or private utilities, structures, projects, bridges, plants and buildings, machines, equipment, processes and works. A person offers to practice professional engineering if the person by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a professional engineer; or who through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to practice professional engineering.

“Professional engineer” is defined in Section 443.01(7) of the Wisconsin Statutes as any person who by reason of his or her knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice. However, because of the important public interest in establishing that the “professional engineer” is worthy of licensing, the legislature has placed the licensing or registration requirements for professional engineers with the Department of Regulation and Licensing and specifically with the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, which is authorized to independently exercise its powers, duties and functions prescribed by statute.

Among its duties, the Examining Board is expected to investigate, hear and determine whether a professional engineer has been guilty of (a) fraud or deceit in obtaining a registration, (b) using his or her professional seal or stamp to be used on documents not prepared by him or

her or under his or her control, or knowingly permitting his or her seal or stamp to be used by any other person, (c) knowingly aiding or abetting the unauthorized practice of professional engineering, (d) committing any act of gross negligence, incompetency or misconduct in the practice of professional engineering, (e) violating any rules of professional conduct promulgated by the Examining Board, or (f) having been convicted of a felony or having been adjudicated medically incompetent.

Disciplinary proceedings against a professional engineer are held by the Examining Board subject to the Administrative Rules promulgated for hearings and the Examining Board may reprimand, limit, suspend or revoke the registration of a registered professional engineer if it determines that substantial evidence exists that the engineer violated one or more of the provisions of § 443.11(1) of the Wisconsin Statutes. The action of the Examining Board is subject to review by the circuit court for the county where the petitioner resides and the petition for judicial review must be served on the Examining Board and filed with the court within 30 days after the service of an order finally disposing of the matter in dispute before the Examining Board. The 30-day period allowed for the filing and service of a petition for judicial review is jurisdictional. If the petition is not timely served and filed, the circuit court has no jurisdiction to review the decision of the Examining Board.

Readers can find an example of a judicial proceeding to review the revocation of a license of a professional engineer in the Supreme Court decision Vivian v. Examining Board of Architects, Professional Engineers and Land Surveyors, 61 Wis.2d 627, 213 N.W.2d 359 (1974). In that case, the Examining Board itself filed a complaint against Francis J. Vivian, a registered professional engineer, alleging that his acts in designing and supervising the construction of a

garage addition that collapsed constituted gross negligence, incompetency and misconduct.

Following a hearing on the complaint, the Board found that Vivian was employed to prepare plans and specifications and to supervise construction of a garage addition, that he prepared the plans and was responsible for supervising the construction, that the garage addition collapsed due to a failure of an open web frame truss which Vivian designed, but was not designed or constructed to support a reasonable live load. The Examining Board entered conclusions of law after its findings, holding:

- (1) That the failure to design an “open web frame truss” which would support a “reasonable live load” constituted incompetency;
- (2) That the failure to correct said design prior to construction constituted gross negligence in the practice of professional engineering;...

The Board also determined that Vivian’s performance of welding on the project without being a certified welder constituted misconduct.

Based on the findings and conclusions of the Examining Board, the Board ordered his registration revoked for six months.

A petition for review was filed by Vivian with the circuit court of Dane County who held (1) Vivian was guilty of misconduct in performing the welding, but (2) the acknowledged mistake of Vivian in the design resulting in the roof collapse did not constitute incompetence or gross negligence, and (3) there was no evidence from which one could infer any such recklessness as would constitute gross negligence or lack of ability to make a proper design as would be said to be incompetence. The circuit court remanded the case to the Examining Board for imposition of an appropriate remedy. The Examining Board appealed to the Wisconsin Supreme Court. The Supreme Court determined that its scope of review would be the same as

the circuit court's scope of review, in that the issue in the case was whether there was substantial evidence that supports the Board's findings, with due weight to be given to the experience, technical competence and specialized knowledge of the Board. The purpose of judicial review is not to retry the case and to substitute the court's judgment for that of the Board, but rather to determine whether the Board's finding of incompetency was supported by substantial evidence. If not, the issue is to be remanded to the Board for appropriate action.

In the Vivian case, the Supreme Court held that (1) the determination of grossness of negligence of the professional engineer is to be made by those knowledgeable to the particular profession, (2) the determination of whether a professional engineer's failure to properly design or supervise construction of a roof-supporting truss on the garage addition was gross negligence was a matter for the Examining Board and that the matter would be remanded to the Board for such determination, (3) the Examining Board is holding that the professional engineer's failure to properly design the garage addition which collapsed constituted incompetency was not supported by substantial evidence, and (4) the statute making incompetency, gross negligence or misconduct grounds for revocation of a P.E. license requires "incompetence" to refer to some demonstrated lack of competence or ability to perform professional functions, and that "gross negligence" involves some higher degree of failure to exercise ordinary care of judgment and "misconduct" relates to some deviation from a fixed duty or definite rule of conduct and that the three words are not entirely synonymous nor completely interchangeable.

Not many cases involving complaints against professional engineers reach the highest court of the State, but when they do, the cases are instructive for all professionals. Recently, a case involving a complaint against a veterinarian which was heard by the Veterinary Examining Board was decided by the Wisconsin Court of Appeals and which is now the subject of a petition for review before the Wisconsin Supreme Court. That particular case will be reviewed in the

next edition of this publication.