

**MINUTES OF THE AUGUST 25, 2009
CONSTRUCTION CONTRACTORS BOARD MEETING**

The Construction Contractors Board met on Tuesday, August 25, 2009, in the Oregon Room, West Salem Roth's IGA, 1130 Wallace Rd. NW, Salem, Oregon.

Attendees:

Board Members: Chair, Tom Skaar, Chuck Crump, Richard DeWolf, Rob Hernandez, Dennis Schad, Mary Stern and Rob Yorke. Board members Jon Mangis and Sandy Trainor were excused from the meeting.

Staff: Administrator Craig P. Smith, Administrative Services Manager Linda Teet, Education Manager Gina Fox, Enforcement Manager Richard Blank, Licensing Supervisor Karen Taylor, Information Technology Manager Shelly Wiles, Field Investigations Manager Robert Rambo, Communications Specialist Tori Garcia, CSU staff Janie Hanson and Patti McCarter and Board Secretary Catherine Dixon. Assistant Attorney General Joanna Tucker Davis was also present.

Guests: Bonnie Sullivan

A. PROCEDURAL

1. Call to Order:

Chair Tom Skaar called the meeting to order at 8:05 a.m.

2. Approval of Agenda and Order of Business:

The agenda for the August 25, 2009, meeting was approved.

3. Approval of Minutes:

The June 23, 2009, Board meeting minutes and Appeal Committee meeting minutes were approved.

4. Board Member Reports:

Board members reported on current CCB related events in the geographic region, in which they live and work.

5. Election of Officers:

Chair Tom Skaar opened the nominations for Board chair and vice-chair.

MOTION: Tom Skaar moved to nominate Rob Hernandez as Board chair and nominated Rob Yorke as Vice Chair.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

6. Agency Report:

Administrator Smith introduced two new Customer Service staff Janie Hanson and Patti McCarter and Education Section Communications Specialist Tori Garcia to Board members.

a. Number of New Licenses Processed Per Month:

Administrator Smith reported that the number of new licenses processed in July 2009 was 302 (92 percent of 325 projected). The average number of new licensees per month for the period July 2008 through June 2009 was 303. The 2009-11 budget is based on an average of 325 new licenses per month. The number of new licenses issued by the agency is down significantly, even during the business season.

b. Rate of Renewals:

Administrator Smith reported that the renewal rate for July 2009 was 70.7 percent (94 percent of projections). The 2009-11 budget is based on 75 percent renewal rate. The average renewal rate for the period July through June 30, 2009 was 75.1 percent.

Board members would like the last line of the average box right below the chart to read July 09-current month of report, deleting the word "January".

(Staff Action Item 8.09.A.6.)

c. Revenue and Expenditure Report:

Administrator Smith discussed the revenue chart with Board members. Revenue is down. CCB must pay close attention to the ending balance in order to balance the budget.

Revenue and expenditures will be extremely important over the next 12 months. Board members will be making decisions on several issues, which will hinge on actual and projected revenues including:

- a. July 1, 2010 license fee adjustment;
- b. 2010 special session;
- c. 2011 legislative concepts;
- d. 2011-13 budget for next session; and
- e. 2009-11 budget execution (cut backs).

d. CFR Gold Star Award:

Administrator Smith reported that CCB was awarded a FY 2008 Gold Star Certificate for outstanding work. Administrator Smith thanked Linda Teet for her hard work.

e. Workload Charts:

Administrator Smith briefly discussed the workload charts with Board members.

Administrator Smith reported that staff continue to be firm with contractors who are having cash flow problems and run out of money before the project is completed.

B. ONGOING ISSUES:**1. 2009 Legislation:**

Administrator Smith briefly discussed the 2009 legislation with Board members.

2. Best Practices for Boards and Commission:

Administrator Smith and Education Manager Gina Fox discussed best practices with Board members. Board members voted on the best practices as follows:

1) Executive Director's performance expectations are current.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

2) Executive Director receives annual performance feedback.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

3) The agency's mission and high-level goals are current and applicable.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

4) The board reviews the Annual Performance Progress Report.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

5) The board is appropriately involved in review of agency's key communications.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

6) The board is appropriately involved in policy-making activities.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

7) The agency's policy options packages are aligned with their mission and goals.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

8) The board reviews all proposed budgets (likely occurs every other year).

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

9) The board periodically reviews key financial information and audit findings.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

10) The board is appropriately accounting for resources.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

11) The agency adheres to accounting rules and other relevant financial controls.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

12) Board members act in accordance with their roles as public representatives.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

13) The board coordinates with others where responsibilities and interests overlap.

VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

14) The board members identify and attend appropriate training sessions.
VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

15) The board reviews its management practices to ensure best practices are utilized.
VOTE: 7-0, Ayes— Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

Board members suggested that every Board packet have the mission statement and goals in the front of the notebook.

(Staff Action Item 8.09.B.2a.)

Board members suggested that early on in the 2011 legislative process that they brainstorm about possible new legislation. Board members would like to be more proactive and asked staff to schedule a brainstorm session for 15 to 20 minutes in early 2010 during a Board meeting.

(Staff Action Item 8.09.B.2b.)

3. Insurance Courtesy Notices—Cutbacks:

Administrator Smith discussed staffs' recommendation that the 60-day insurance notice sent out to remind licensees be cut to save money. This is the third notice contractors receive from CCB.

During the 07-09 biennium, CCB would have saved \$33,820 by cutting the third notice. The downside is that more licensees may fail to timely provide proof of insurance to CCB, and thereby cause their license to be suspended and may lose a bid because they didn't renew their insurance.

Board members suggested sending licensees email reminders. CCB, however, doesn't have current email addresses for most licensees. Administrator Smith reported that staff are working on setting up a list serve where licensees can sign up to receive CCB information by email. Board members suggested sending an email to the list of licensees that have provided an email address letting them know that they can sign up for the list serve through "My License".

(Staff Action Item 8.09.B.3a.)

Staff should start documenting efforts made to get licensees to sign up for the online email notices.

(Staff Action Item 8.09.B.3b.)

The agency shall reduce the three insurance notices down to two notices. Board members would like to send the first notice 30 days prior to insurance expiration and the second notice when the insurance has expired.

(Staff Action Item 8.09.B.3c.)

4. DRS—DAS Efficiencies and Streamlining Efforts (DRS Streamlining and Review Committee):

Administrator Smith discussed the minutes of the July 28, 2009 meeting with Rick Gardner from Department of Administrative Services (DAS), Budget and

Management (BAM) with Board members. Mr. Gardner's recommendations were discussed.

Board member Chuck Crump stated that when he talked to Kelly Freels, Mr. Freels said Rick Gardner would be available. Mr. Crump did not realize that Mr. Gardner was a statistician which has nothing to do with the review of the procedures Mr. Crump had in mind. Board members liked the suggestions Mr. Gardner made and would like staff to continue to work with Mr. Gardner.

After discussing their concerns regarding the amount of time it takes to process a DRS complaint, Board members determined that a subcommittee would be set up to review the DRS process. The agency staff, Board members, and the public, all report that it is critical that the agency reduce the time it takes to process DRS complaints. Stakeholders, as well as staff, are not satisfied with the length of time it takes to process complaints.

Board members Chuck Crump, Rob Yorke, Tom Skaar and Richard DeWolf will serve on the subcommittee. Board members Chuck Crump and other subcommittee members, time permitting, will interview DRS staff and draft recommendations for changes. The full subcommittee will meet on October 6, 2009 to review the information gathered and draft final recommendations to submit to the full Board by January 2010.

(Staff Action Item 8.09.B.4.)

5. CCB Business Plan:

Administrator Smith and Education Manager Gina Fox discussed the draft business plan with Board members. Administrator Smith discussed the mission statement, vision statement, goals and objectives with Board members. The agency's strengths, challenges and opportunities for improvement were discussed. Staff hope to finalize the business plan at the next Board meeting.

(Note: The DRS Review Website Meeting, LSAC and other meetings has pushed back the final plan review to January 2010 meeting.)

6. Draft 2009 Key Performance Measures (KPM):

Administrator Smith discussed the draft performance measure report with Board members.

7. Website Workgroup Subcommittee:

Staff reported that the website needs to be updated; it was last revised in 2006. Ms. Fox will set up a workgroup meeting with the web review workgroup consisting of Jon Mangis, Tom Skaar, Richard DeWolf and Mary Stern (scheduled permitting). CCB has received requests from industry groups and contractors to review the information displayed on the website. Some trade associations have asked the Board to consider taking frivolous DRS complaints off the website, items that are out of CCB's jurisdiction, and items where a decision has not been made. We need to find a way to display DRS complaint information so consumers have the information they need, while considering the needs of industry.

(Staff Action Item 8.09.B.7.)

It is vital, however, that the agency provide the information that the public wants and demands be available (regarding licensees) so that they may make informed decisions when choosing a construction service provider.

8. CCB Reference Manual:

The agency reference manual will be revised soon. Board members agreed to help proofread chapters and offer edits to staff.

Education Manager Gina Fox reported that she plans to send each Board member a section of the manual to review a chapter when it is time to update the manual.

Ms. Fox reported that Board member Yorke reviewed the manual and took the CCB test. It was determined that Building Envelope Systems (BEST) chapter would be added to the manual.

Administrator Smith reported that the prerequisite education program needs to be reviewed and improved. The agency is receiving complaints about the quality of the classes. Most states only administer a test, they do not write a manual or deal with course materials.

9. List of Subcontractors Service for Consumers:

Administrator Smith discussed developing a plan for the agency to handle requests by consumers for a list of subcontractors for newly built homes. OHBA has asked the Board to consider providing the service to homeowners. The agency has received requests to change the website to give homeowners the ability to request of list of subcontractors that work on their new home.

Board members discussed the use of blanket contracts used by general contractors. In these cases the general contractor may have checked whether the subcontractor was licensed at the time the contract was signed. However, the contract may be several years old with no further checking whether the subcontractor is currently licensed.

The general contractor must be encouraged to use "My License" to keep them informed of their subcontractors CCB license status, and as a tool to help them manage the risk of working with unlicensed subcontractors.

Board members suggested that staff draft a plan to implement a program.
(Staff Action Item 8.09.B.9.)

C. ADMINISTRATIVE RULES HEARINGS

1. Discussion of Administrative Rules:

Administrator Smith discussed the proposed rules for the rulemaking hearing.

2. Rulemaking Hearing:

Chair Skaar opened the rulemaking hearing at 11:04 a.m.

Public Comment:

No one came forward to give public comment.

Board members discussed whether the wording regarding military service. Should the wording be “in the military or naval service of the United States, or any of its auxiliary corps” or should it read “in the United States armed forces”. Staff will consult with counsel on what the wording should be.

(Staff Action Item 8.09.C.2.)

Note: Cathy Dixon has researched and made corrections to the proposed rules.

MOTION: Mary Stern moved to adopt the proposed rule amendments on pages 176 through 184 of the Board packet except for OAR 812-008-0070, 812-008-0110, and 812-020-0062 which will be adopted at the next Board meeting after determining the proper wording regarding military service.

VOTE: 7-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern and Yorke

(See Attachment B for the language of the adopted rules.)

3. Permanent Rules Filed June 25, effective 7/1/09:

Administrator Smith briefly discussed the permanent rules filed on June 25, 2009 with Board members.

4. First Look at Draft Proposed Rules:

Administrator Smith discussed the draft proposed rules with Board members.

5. Rule Hearing Dates Chart:

Administrator Smith discussed the rule hearing dates with Board members.

D. PUBLIC COMMENT:

Chair Skaar opened the meeting to take public comment.

Bonnie Sullivan: Ms. Sullivan stated that she applauds Education Manager Gina Fox and Board members for talking with the Statesman Journal newspaper. The August 18, 2009 news article was good. Ms. Sullivan reported that insurance agents are blaming CCB for all of the new regulations and tell their clients CCB was responsible for the new legislation. The continuing education requirements are playing a big role in why licensees are not renewing their license and the new requirement for a residential and commercial bond.

E. NEW BUSINESS:**1. Four Year CCB License Transition Plan:**

Administrator Smith reported that there are several hundred licensees that purchased four year licenses and beginning July 1, 2010 their old license will be legal, but they will not be able to perform any work without a new endorsement. CCB will need to tell these licensees that they will need to get a new bond, insurance and endorsement.

Staff will draft a transition plan and draft letter for review at the next Board meeting. The letter will outline what the licensee must do to continue to work legally; no additional fees will be charged to the licensees for the license change.

(Staff Action Item 8.09.D.1.)

CCB IT staff shall run a report to see how many licensees had a four year license.

(Staff Action Item 8.09.D.2.)

2. Phinney Construction & Remodeling Inc. Letter:

Administrator Smith discussed Phinney Construction & Remodeling Inc.'s letter with Board members. The contractor did not renew its license because the process and new requirements for licensure have become too difficult.

3. Governor's Executive Order No. 09-10 (Regulation Streamlining):

Administrator Smith discussed the Governor's executive order with Board members. The Office of Regulatory Streamlining will end on June 30, 2009, and elements of regulatory streamlining will move to the Governor's Office, Economic Revitalization Team (ERT).

4. Outreach to Building Trades (August 13, 2009):

Administrator Smith discussed his meeting with Oregon State Building & Construction Trades Council on August 13, 2009. CCB is working to find ways to partner with the Trades Council. The agency must do more to build good working relationships with building trades and all contractor associations and organizations.

5. CCB "Information Notice to Owner" re Lien on Condos—AAG Advice:

Administrator Smith briefly discussed the memo from AAG Lorenzo with Board members regarding liens on condos. Board members felt that the issues involved, as well as the memo were complex. This is a classic example of why the Board must seek advice from counsel and always strive to reduce the complexity of the regulations that we administer and promulgate in the rulemaking process.

6. Elder Abuse Task Force (Sunset):

Administrator Smith and Education Manager Gina Fox reported that the Elder Abuse Task Force sunset on July 1, 2009. The group will continue to work together.

7. NASCLA Yearly Full Conference:

Administrator Smith is the Secretary of the National Association of State Contractor Licensing Agencies (NASCLA). This year he will be attending the yearly conference in September.

Administrator Smith reported that he will be sending Education Manager Gina Fox to the NASCLA conference in Tennessee. Ms. Fox will be able to discuss continuing education with other states.

Administrator Smith will also be attending the conference, but will pay for the trip himself and use his vacation time as he does not feel it would be right for him to use public funds when revenue is down.

Administrator Smith and Ms. Fox will be formally presenting an overview of Oregon's continuing education (CE) development to the national audience.

F. SPECIAL PROGRAM:

1. Home Inspectors:

Administrator Smith discussed the draft proposed rule change to 812-001-0200 to amend the rule to correct grammar and adopt the form "Home Inspection Consumer Notice"; OAR 812-008-0110 to amend the to add language to comply with the requirements of ORS 408.450 that excuses certified home inspectors on active duty service from paying license renewal fees; and OAR 812-008-0202 to amend to require on the first page of the contract and inspection report a disclaimer notifying any person other than the home inspector's client that they should not rely upon the report and to revise the reference to the notice requirement to the new CCB notice "Home Inspection Consumer Notice".

2. Lead-Based Paint Program:

Administrator Smith reported that Field Investigations Manager Bob Rambo will be the person in charge (PIC) to help shape the agency's new Lead-Based Paint Program. Staff met with Department of Human Services (DHS) Health Division to discuss implementation. All CCB's investigators will need to be trained on the new lead-based paint requirements.

3. Interagency Compliance Network:

Administrator Smith discussed meetings the Interagency Compliance Network has held. Agencies are working together to stop the underground economy, paying workers under the table and misclassification of workers. Not all of the agencies can share all their information with other agencies. Bob Rambo is working on joint investigations with the other agencies.

4. Residential Continuing Education:

Education Manager Gina Fox discussed the draft Residential Continuing Education Development Plan with Board members.

5. Locksmith Certification Program:

Administrator Smith reported that Enforcement Manager Richard Blank is the lead on this program. This program creates a new certification program and CCB will start accepting application January 1, 2010. Administrative rules need to be written to implement the program, including continuing education requirements and penalty matrix. The advisory Board will be set up and meet this fall.

6. Small-Scale Energy Loan Program:

Administrator Smith reported that CCB will set up a certification program that starts in about a year. The Department of Energy (DOE) can set up a pilot project that will not need certification. If money is too tight, DOE may not take any action.

G. CCB PROGRAM ISSUES:**1. Administrative Services:**

Administrative Services Manager Linda Teet discussed the legislatively approved budget document with Board members. The EBL policy packages were not approved. The total budget for 09-11 is \$15,082,530 which represents an approximate two percent reduction.

2. Education:

Due to time constraints no additional report was given.

3. Licensing/CSU:

Due to time constraints no additional report was given.

4. Enforcement Program:

Due to time constraints no additional report was given.

5. Field Investigations:

Due to time constraints no additional report was given.

6. Dispute Resolution Services (DRS):

Due to time constraints no additional report was given.

7. Administration:**a. News Clippings:**

Administrator Smith briefly mentioned the news clippings.

b. Board Calendar 2009:

Administrator Smith briefly discussed the Board calendar.

c. Agenda Items for the Next Meeting:

- Administrative Rules
- Budget Issues

H. Adjournment

The Board meeting adjourned at 12:55 p.m. The next Board meeting is scheduled for 8:30 a.m. October 27, 2009.

Sincerely,

Catherine Dixon
Board Secretary

Attachment A
MINUTES OF THE AUGUST 25, 2009
CONSTRUCTION CONTRACTORS BOARD
APPEAL COMMITTEE MEETING

The Construction Contractors Board Appeal Committee met on Tuesday, August 25, 2009, at West Salem Roth's IGA, Oregon Room, 1130 Wallace Rd NW, Salem, Oregon. Appeal Committee Members present included: Chair, Tom Skaar, Chuck Crump, Richard DeWolf, Rob Hernandez, Dennis Schad, Mary Stern and Rob Yorke. Board members Jon Mangis and Sandy Trainor were excused from the meeting. Construction Contractors Board staff present were: Administrator Craig P. Smith, Education Manager Gina Fox, Administrative Services Manager Linda Teet, Enforcement Manager Richard Blank, Field Investigations Manager Robert Rambo, Information Technology Manager Shelly Wiles, Linda Burns, Tori Garcia, Janie Hanson, Patti McCarter, Christina Ulberg, and Board Secretary Catherine Dixon. Assistant Attorney General Joanna Tucker Davis was also present.

Guests Included: Bonnie Sullivan

The agenda for the August 25, 2009, meeting was approved.

The Committee convened at 1:05 p.m. to decide the following cases for which exceptions have been filed:

1. Enforcement No. 75263, West Coast Construction & Remodeling, Inc. (respondent). Respondent Eugene LaBunsky appeared before the Board. Enforcement Manager Richard Blank appeared before the Board.

MOTION: Chuck Crump moved to amend page 2, finding of fact number 3, 5th line to correct the complaint number to read "15193-112" and affirm the proposed order suspending or refusing to renew respondent's CCB license until respondent files a bond of five times the amount normally required.

VOTE: 7-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

2. Enforcement No. 75002, Charles Kleit Davis. Respondent Charles Kleit Davis did not appear before the Board. Enforcement Manager Richard Blank appeared before the Board.

MOTION: Rob Yorke moved to affirm the proposed order and issue a final order issuing a civil penalty in the amount of \$600.

VOTE: 7-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

3. Enforcement No. 75757, Kenneth Neil Rudderham. Respondent Kenneth Rudderham's Attorney Brian Buchanan appeared before the Board. Respondent Kenneth Rudderham was present. Enforcement Manager Richard Blank appeared before the Board.

MOTION: Mary Stern moved to remand the matter back to the administrative law judge for the hearing to be reopened for further information on the offer of proof regarding the witnesses' proposed testimony to be placed on the record. If after considering the additional information regarding the offer of proof, the administrative law judge finds that the witnesses would not be cumulative, repetitious or immaterial, the administrative law judge should allow the witnesses to testify and reconsider the case accordingly. If the administrative law judge finds that they are cumulative, repetitious or immaterial, the administrative law judge should provide this Board with that information and the reasons why.

VOTE: 5-2, Ayes—Crump, Hernandez, Schad, Skaar, and Stern; Nays—DeWolf and Yorke.

4. Complaint No. 138175-101, Doug Demirelli (complainant) vs. Standard Paint & Wallpaper Co Inc. (respondent). The complainant Doug Demirelli did not appear before the Board. The respondent, Standard Paint & Wallpaper Co Inc., did not appear before the Board.

MOTION: Tom Skaar moved to affirm the proposed order and issue a final order dismissing the complaint.

VOTE: 7-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke.

The meeting adjourned at 2:30 p.m. The next Appeal Committee meeting is scheduled for October 27, 2009.

Respectfully submitted,

Catherine Dixon
Appeal Committee Secretary

Attachment B

812-003-0140

License Application Fees

(1) The application fee for all new, renewal, or reissued licenses is \$260.

(2) [Application] **Except as provided in section (3) of this rule, application** fees will not be refunded or transferred.

(3) If a licensee submits an application to renew a license and the agency cannot renew the license because the applicant has formed a new business entity, the agency may refund the renewal application fee, less a \$40 processing fee.

(4)(a) Any licensee in the military or naval service of the United States, or any of its auxiliary corps, need not pay a license renewal fee if such fee would be due during the licensee's active duty service.

(b) A licensee in the military or naval service of the United States, or any of its auxiliary corps, shall pay the next license renewal fee that will become due after the licensee is discharged from active duty service.

(c) The agency may request that the licensee provide documentation of active duty status and of discharge.

(d) Section (4) of this rule applies to licensees that are sole proprietors or partners in a general partnership.

Stat. Auth.: ORS 670.310, 701.238 & 701.235

Stats. Implemented: ORS 701.056, 701.063, & 701.238

(12/04, 8/05, 12/06, 2/08, 1/09 (eff. 2/1/09), 9/09)

812-003-0325

Change of Corporate Officer, LLC Manager, LLC Member, Trustee

When a contractor notifies the agency of any change in the identity of a person who holds a position with the contractor that is described in ORS 701.046(1)(h), (E), (F), (G), or (I), or 701.046(1)(i) (D), (E), or (F), the contractor must provide at least one of the following.

(1) For the addition, removal or resignation of a corporate officer as described in ORS 701.046(1)(h)(E) or 701.046(1)(i)(F):

(a) A copy of the corporation's board minutes evidencing the addition or removal of the corporate officer;

(b) A copy of the corporation's board consent evidencing the addition or removal of the corporate officer;

(c) A letter from the corporation's attorney advising the agency of the addition or removal of the corporate officer;

(d) A letter from the corporation's manager of personnel or human resources advising the agency of the addition or removal of the corporate officer; or

(e) In the case a resignation, a copy of the corporate officer's letter of resignation.

(2) For the addition, removal or resignation of a manager of a manager-managed limited liability company, as described in ORS 701.046(1)(h)(F) or 701.046(1)(i)(D):

(a) A copy of the limited liability company's minutes evidencing the addition or removal of the manager;

(b) A copy of the limited liability company's consent evidencing the addition or removal of the manager;

(c) A letter from the limited liability company's attorney advising the agency of the addition or removal of the manager;

(d) A letter from the limited liability company's manager of personnel or human resources advising the agency of the addition or removal of the manager; or

(e) In the case a resignation, a copy of the manager's letter of resignation.

(3) For the addition, expulsion or withdrawal or other cessation of a member of a member-managed limited liability company, as described in ORS 701.046(1)(h)(G) or 701.046(1)(i)(E):

(a) A copy of the limited liability company's minutes evidencing the addition or expulsion of the member;

(b) A copy of the limited liability company's consent evidencing the addition or expulsion of the member;

(c) A letter from the limited liability company's attorney advising the agency of the addition or cessation of the member;

(d) A letter from the limited liability company's manager of personnel or human resources advising the agency of the addition or cessation of the manager;

(e) In the event of a member's withdrawal, a copy of the written notice of withdrawal.

(4) For the addition, removal or resignation of a trustee of a trust, as described in ORS 701.046(1)(h)(I):

(a) A copy of the trust's minutes evidencing the addition or removal of the trustee;

(b) A copy of the trust's consent evidencing the addition or removal of the trustee;

(c) A letter from the trust's attorney advising the agency of the addition or removal of the trustee;

(d) A letter from the trust's manager of personnel or human resources advising the agency of the addition or removal of the trustee; or

(e) In the case a resignation, a copy of the trustee's letter of resignation.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.114

(9/09)

812-003-0330

Inactive Status Generally

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2)(a) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(b) Subsection (a) of this section does not apply to members of the United States armed forces serving on active duty provided that they perform work as a contractor only as part of their military duties.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status a license must have:

(a) A current active license;

(b) A current suspended license; or

(c) A license that has expired no more than one year.

(5) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline in order to be eligible for the inactive status.

(6) The licensee must submit a request to convert to inactive status on forms provided by the agency; and

(7) The licensee must comply with OAR 812-003-0340, 812-003-0350, and 812-003-0360.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.056 & 701.063

(12/04, 6/08, 5/09, 9/09)

812-005-0280

Fitness Standards

(1) In considering whether to revoke, suspend, or refuse to issue a license pursuant to ORS 701.098(1)(h)(A)-(I), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting.

(a) Fitness to engage in construction contracting includes, but is not limited to the ability to:

(A) Refrain from violent, threatening, intimidating or sexually predatory behavior;

(B) Refrain from dishonest or fraudulent conduct; or

(C) Be financially responsible.

(b) Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(c) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by 701.098(1)(h)(A)-(I). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(d) Failure to provide requested information in (1)(c) of this section may result in the denial of a license.

(2) The agency may revoke, suspend, or refuse to issue a license if the applicant, licensee, or an owner, officer or responsible managing individual of the applicant or licensee demonstrates a lack of financial responsibility pursuant to ORS 701.098(2) and ORS 701.102(2)(d).

(a) Lack of financial responsibility is evidenced by failure to pay a final order of the board, issued under ORS 701.145 or 701.146, where the final order, **either alone or combined with any other unpaid final order**, exceeds the amount of the applicable bond and the final order was issued against:

(i) The applicant or licensee; or

(ii) A business in which the owner, officer or responsible managing individual of the applicant or licensee is, or was, an owner, officer or responsible managing individual during the work period in which the business' obligation giving rise to the final order arose or was incurred.

(iii) As used in subsection (a) of this rule, “officer” includes any person listed in ORS 701.005(11) or OAR 812-002-0533.

(b) Lack of financial responsibility is evidenced by failure to pay a civil penalty final order of the Director, Department of Consumer and Business Services, issued under ORS 654.086.

(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if a contractor engages in conduct that harms a consumer by:

(a) Arranging for or undertaking work as a contractor that:

(A) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;

(B) The work causes damage to the consumer or to the consumer’s property; and

(C) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.

(4) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0160 and 437-001-0165 for a fifth or subsequent repeat violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

(5) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0175 for a willful or egregious violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098 & 701.102

(6/08, 11/08, 5/09, 9/09)

(Note: Section (1) was formerly 812-003-0450, 11/08)

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(a) A “complaint for damages” as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency’s request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an “Information Notice to Owners about Construction Liens” as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense warning, second offense \$50, subsequent offenses \$200.

(12) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

(13) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(14) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(15) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(16) Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(17) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(18) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(19) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(20) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(22) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(23) When, as set forth in ORS 701.098(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, **one corporation**, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(24) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(25) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(26) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(27) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(28) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(29) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(30) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(31) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(32) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(34) Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(35) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

(36) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(37) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or ORS 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(38) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(39) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

(40) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(41) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(42) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345 & 701.992

(4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/85, 4/85, 1/87, 3/87, 1/88, 2/88, 6/88, 1/89, 11/89, 2/90, 3/90, 4/90, 5/90, 6/90, 7/90, 10/90, 11/90, 3/91, 9/91, 1/92, 2/92, 4/92, 6/92, 5/93, 12/93, 1/95, 9/95, 10/95, 8/96, 10/98), temp. 11/99, 5/00, 6/00, temp. 11/00, 4/01, 12/01, temp. 3/02, 3/02, 6/02, 9/02, 12/03, 6/04, 12/04, 12/05, 1/06, 6/06, 12/06, 6/07, 2/08, 6/08, 9/08, 11/08, 1/09 (eff. 2/1/09), 5/09, 9/09)