

No. 40010-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DENNIS RITTER,,
Appellant,

v.

STATE OF WASHINGTON, BOARD OF
REGISTRATION FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS,
Respondent.

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DIVISION II
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BRIEF OF APPELLANT DENNIS RITTER

G. Saxon Rodgers
Washington State Bar No. 5798
Attorney for Appellant

Ditlevson Rodgers Dixon, P.S.
324 West Bay Dr NW, Ste. 201
Olympia, WA 98502
(360) 352-8311

ORIGINAL

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I. INTRODUCTION

The Appellant, Dennis Ritter, is a licensed professional engineer (hereinafter, "P.E."). Ritter had been licensed by the Board of Registration for Professional Engineers and Land Surveyors (hereinafter the "Board") since 1991 without sanction or disciplinary history.

In August of 2007, Ritter was convicted of three counts of child molestation in the first degree in Thurston County Superior Court. In January of 2008, the Board issued a Statement of Charges alleging that Ritter's P.E. license should be suspended or revoked because of his criminal convictions.

Ritter contested the allegations and ultimately, the Board concluded that Ritter's license should be suspended for five years. The Board's decision was issued by Order dated February 13, 2009. Ritter filed a timely Petition for Review. Oral argument before the Thurston County Superior Court occurred on September 11, 2009. That same day, Judge Carol Murphy upheld the decision of the Board. An Order Denying Petition for Review was entered on October 23, 2009. Ritter has timely filed the current appeal.

[The Appellant will refer to the transcript of testimony before the Board as the administrative record ("AR"), the transcript of the argument

before the Thurston County Superior Court as the record of proceedings (“RP”), and the documents of records as the clerk’s papers (“CP”), consistent with the rules of procedure for appeals from Superior Court to the Court of Appeals.]

II. ASSIGNMENTS OF ERROR

A. Assignments of Error (AOE)

1. The Board misinterpreted and/or misapplied RCW 18.235.130(1) and RCW 18.43.105(10).
2. There was not substantial evidence to support the suspension of Mr. Ritter’s license.
3. The Board’s decision to suspend Mr. Ritter’s license was arbitrary and capricious.

B. Issues Pertaining to Assignments of Error

1. Did the Board err when it suspended Mr. Ritter’s license pursuant to RCW 18.235.130(1) and RCW 18.43.105(10) when there was no evidence in the record to show that the acts committed by Mr. Ritter had any effect on his ability, performance, or reliability as a P.E.? (AOE 1, 2) RCW 18.235.130(1) requires that there be a commission of an act “relating to the practice of the person’s profession or operation of the person’s business.”

2. Was there substantial evidence to support the Board's suspension of Mr. Ritter's license when no evidence was introduced, and no finding of fact was made, to show that Mr. Ritter's convictions related to the practice of engineering or were "professional conduct" as required under RCW 18.235.130(1) and RCW 18.43.105(10)? (AOE 2)

3. Was the Board's suspension of Mr. Ritter's license arbitrary and capricious when no evidence was introduced, and no finding of fact was made, to show that Mr. Ritter's convictions related to the practice of engineering or were "professional conduct" as required under RCW 18.235.130(1) and RCW 18.43.105(10)? (AOE 3)

III. STATEMENT OF THE CASE

Mr. Ritter obtained his bachelor's degree in 1985, and his master's degree in 1990. AR at 12-13. He obtained his professional engineer's license in June of 1991. AR at 13. Mr. Ritter has served in some kind of P.E. employment capacity since obtaining his license in 1991. AR at 13.

Mr. Ritter was employed with the City of Lacey beginning in 1993, and ended his employment there in February of 2007. AR at 13. For the first three years, Mr. Ritter worked as the City Engineer, and then became the Public Works Director for the City of Lacey in 1996, where he served until his resignation from employment in 2007. AR at 13-14. At all times as the Public Works Director, Mr. Ritter had professional

engineering duties and responsibilities. These duties and responsibilities were present on a daily basis until Mr. Ritter's resignation from the City of Lacey in February of 2007. AR at 14-15.

Mr. Ritter was charged with criminal sexual misconduct in March of 2007. AR at 16, 72-73. This culminated in the entry of guilty pleas on June 29, 2007 (AR at 74-81), and a Judgment and Sentence was entered in August of 2007. AR at 57-71.

The criminal conduct between Mr. Ritter and his victim (which was one person, an adopted child in his household) occurred in 1998. AR at 16, 22. The sexual misconduct surfaced in the Ritter home in 2004, when Mr. Ritter's wife was made aware of what had happened. AR at 16.

The report of sexual misconduct was not provided to law enforcement until after the victim had turned 18. AR at 31. The police investigation went on for many months. AR at 31. During the time that the sexual misconduct was occurring in 1998, Mr. Ritter was employed as the Public Works Director for the City of Lacey as a professional engineer. AR at 17. Mr. Ritter continued in his Public Works Director/P.E. capacity after the misconduct surfaced within his family. AR at 17.

After the sexual misconduct surfaced publicly, Mr. Ritter resigned from his position as Public Works Director for the City of Lacey, basically to save any embarrassment to his employer because of the public posture

of his employment. AR at 17. At all times, Mr. Ritter was able to carry out his professional duties as Public Works Director in a professional engineering capacity until his resignation from that position. AR at 17.

Mr. Ritter obtained subsequent employment after leaving the City of Lacey and served in a professional engineering capacity at his new job. This new work began in June of 2007. AR at 17. During his new employment, Mr. Ritter continued to carry out professional engineering duties and responsibilities. AR at 18. Mr. Ritter's new employer was aware of his convictions. AR at 20.

Mr. Ritter is presently on community supervision through the Washington State Department of Corrections ("DOC"). AR at 19. Mr. Ritter has very strict conditions imposed upon him by DOC, as part of his community placement process. AR 67 – 69.

The primary focus of the DOC conditions is the safety of the community. In addition, hanging over Mr. Ritter's head is a suspended sentence of 130 months in prison, should he violate the conditions of his sentence and/or community supervision. AR at 61. The community supervision has been imposed for a period of 130 months. AR at 62.

In addition, Mr. Ritter is in sexual deviancy treatment with provider Brian Cobb for a period of three years. AR at 62. Mr. Ritter has been classified as a Level I sex offender, which is used for offenders who pose

the least risk to the community. AR at 22. Mr. Ritter is required to register annually as a convicted sex offender. *Id.*

In the record below, there was no evidence presented on behalf of the Board that Mr. Ritter was unable to perform his duties as a licensed professional engineer. *See* AR 1-32. The only witness that testified in the hearing below was Dennis Ritter. *See Id.* Mr. Ritter submitted numerous letters from other professional engineers indicating that he was a very capable engineer and was professional in carrying out his duties and responsibilities at all times. *See* AR at 114-137. Most, if not all, of these supportive letters on Mr. Ritter's behalf were from people who were fully aware of the convictions for sexual misconduct. *See* generally AR 114-137.

The essence of the substantive presentation of the Board, which was not contested by Mr. Ritter, was proof through court documents that he had been convicted of three counts of child molestation in the first degree. It was argued that these convictions were crimes of "moral turpitude," which also is not contested by Mr. Ritter. The findings of fact made by the Board, as well as evidence presented to the Board, go no farther than to substantiate that Mr. Ritter was convicted of three counts of sexual misconduct, which are crimes of moral turpitude.

The substantive evidence as a whole, presented on behalf of Mr. Ritter through his testimony and the previously referenced support letters, all lead to the factual conclusion that Mr. Ritter can, did, and had been performing all of his responsibilities and duties as a licensed professional engineer, despite the three convictions. Mr. Ritter has interacted with the public in his capacity as a professional engineer both before and after he committed the conduct at issue. This interaction occurred before, as well as after, his convictions in August of 2007. The sexual misconduct had ceased for several years before Mr. Ritter was charged. During that several year period, Mr. Ritter continued his work as a licensed professional engineer.

The Board presented no evidence that there was any safety risk to any recipients of professional engineering services provided by Mr. Ritter. Mr. Ritter provided evidence that he was strictly monitored by the Washington State Department of Corrections and the Thurston County Superior Court, to ensure public safety to all citizens of this community or any other community where Mr. Ritter may reside or work.

At oral argument before the Superior Court, the Board's attorney framed the issue as "whether the Court should overturn the Board's determination that the act of molesting a child relates to the practice of engineering." RP at 19. The Board then conceded that "Mr. Ritter makes

a compelling case, arguing that his technical skills are not at all impaired by the fact that he molested his daughter.” RP at 19, 20. The Board’s argument regarding why a conviction for child molestation makes Mr. Ritter unfit to be a licensed P.E. was that “engineers are not licensed merely to ensure that their technical skills are up to par” but also “are licensed to ensure that bridges don’t collapse, that tower cranes don’t fall, that roads don’t wash out, and that buildings don’t crumble in earthquakes.” RP at 20.

When pressed by the court to point out a factual finding by the Board that demonstrated that Mr. Ritter’s conviction is related to the practice of engineering, the Board’s attorney cited conclusion of law 3.9 of the Board’s decision. RP at 21. Conclusion of law 3.9 states “Respondent’s crimes are contrary to the conduct and standards generally expected of those practicing professional engineering.” RP at 22. The Board’s attorney went on to argue that conclusion of law 3.9 is a “mixed fact/law issue” because “[e]ngineers are responsible not only for the safety of our infrastructure, but also for the safety of our consumer products of vehicles, transportation systems, the impact of industry, including environmental impact and on and on.” *Id.*

At no point during the oral argument before the Superior Court did the Board’s attorney point to any evidence, relied on by the Board or

otherwise, which indicated that the record contained any fact which demonstrated “that the act of molesting a child relates to the practice of engineering” or to the “accepted professional conduct” of a professional engineer. The reason that no evidence has been presented by the State to show that Mr. Ritter’s conduct relates to his profession or was “professional conduct” is because, as was pointed out to the Board, “they can’t present any.” AP at 38.

IV. ARGUMENT

A. STANDARD OF REVIEW.

This appeal is made pursuant to the Administrative Procedures Act. Under the Administrative Procedures Act, the appellate court may grant relief to the petitioner based on an agency’s erroneous interpretation of the law or an agency decision which is arbitrary or capricious. *Greenen v. Washington State Bd. Of Accounting*, 126 Wn. App. 824, 829-830, 110 P.3d 224 (2005).

The agency erroneously interpreted RCW 18.235.130 and RCW 18.43.105 because it did not require an evidentiary showing that Mr. Ritter’s conviction related to the practice of his profession or operation of his business or his professional conduct, as is required by RCW 18.235.130 and RCW 18.43.105. In reviewing a superior court’s final order on review of a Board decision, an appellate court applies the

standards of the Administrative Procedures Act directly to the record before the agency, sitting in the same position as the superior court. *Honesty in Environmental Analysis and Legislation v. Central Puget Sound Growth Management Hearings Board*, 96 Wn. App. 522, 526, 979 P.2d 864 (1999). The question of whether an agency has erroneously interpreted or applied the law is reviewed de novo. *Id.* The appellate court determines whether an agency decision is supported by substantial evidence. *Id.* Substantial evidence is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order. *Id.*

In addition, the Board's actions were arbitrary and capricious because there was no evidence in the record to support the Board's determination that Mr. Ritter's conviction relates to the practice of his profession or the operation of his business, or to his professional conduct. An agency's action is arbitrary or capricious if it is willful, unreasoning, and issued without regard to or consideration of the surrounding facts and circumstances. *Greenen*, 126 Wn. App. at 831.

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B. WASHINGTON STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS WAS WITHOUT AUTHORITY TO SUSPEND APPELLANT'S LICENSE SIMPLY BECAUSE HE WAS CONVICTED.

1. Statutory Interpretation

The purpose of statutory construction is to give both content and force to the language used by the legislature. *Dautel v. Heritage Home Center, Inc.*, 89 Wn. App. 148, 152, 948 P.2d 397 (1997). Courts must give meaning to every word in the statute. *Echo Bay Community Ass'n v. State, Dept. of Natural Resources*, 139 Wn. App. 321, 327, 160 P.3d 1083 (2007). Courts examine the statute as a whole and the statutory interpretation must not create an absurd result. *Greenen*, 126 Wn. App. at 830.

RCW 18.235.130(1) requires that the act involving moral turpitude, dishonesty, or corruption *relates* "to the practice of the person's profession or the operation of the person's business." RCW 18.235.130(1) (emphasis added). As a result, any suspension of Mr. Ritter's license pursuant to RCW 18.235.130(1) requires a finding of fact on the part of the Board which is sufficient to show that Mr. Ritter's conduct relates to the practice of his profession or the operation of his business. Any sanction which is not supported by a finding of fact showing that Mr. Ritter's act relates to the practice of Mr. Ritter's profession or the operation of his

business does not give meaning to the terms used by the legislature when it enacted RCW 18.235.130(1).

RCW 18.43.105(10) provides that the Board can discipline a licensee for an act which is “customarily regarded as being contrary to the accepted *professional conduct* or standard generally expected of those *practicing professional engineering* or land surveying.” RCW 18.43.105(10) (emphasis added). When you review RCW 18.43.105 as a whole it is clear that the statute is meant to regulate professional conduct.

For example: section one deals with bribes or other inappropriate influencing of the award of professional work; section two deals with being deceptive or untruthful in a professional report, statement, or testimony; section three deals with wrongfully injuring the professional reputation, prospect, or business of anyone; section four deals with billing practices for professional work; section five deals with violations of RCW 18.43; section six deals with conflicts of interest as an engineer and relating to work performed as an engineer; section seven deals with failure to disclose certain facts to a client or an employer; section eight deals with unfair competition of an engineer; and section nine deals with improper advertising. Section ten is a catchall section, designed to cover an unprofessional conduct not specifically identified in sections one through nine. Reading RCW 18.43.105 as a whole, and giving meaning to every

word in RCW 18.43.105(10), requires that the Board's decision be supported by a finding of fact showing that Mr. Ritter's act relates to "accepted professional conduct" or conduct involving "practicing professional engineering." *See* RCW 18.43.105; *Greenen*, 126 Wn. App. at 830.

2. There was insufficient evidence, as a matter of law, for the Board to suspend Mr. Ritter's license.

It is Mr. Ritter's position that there is no evidence in the record below that his conviction for the crimes of child molestation relate to the practice of being a professional engineer or "the operation of the licensee's business," so as to be a foundation for disciplinary action by the Board. *See* RCW 18.235.130(1). Further, Mr. Ritter argues that there is no evidence in the record below that his conviction was for conduct which is punishable under RCW 18.43.105(10) as being prohibited "professional conduct." *See* RCW 18.43.105.

The purpose of the licensing statute is to make sure that only qualified persons may practice engineering or land surveying. RCW 18.43.010 states,

"In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying,

shall hereafter be required to submit evidence that he is qualified so to practice, and shall be registered as hereinafter provided;....”

See also Martin v. TX Engineering, 43 Wn. App. 865, 869, 719 P.2d 1360 (1986).

The court in *Martin* states that the history and purpose of the licensing statute is to protect the public from incompetent contractors. *Martin v. TX Engineering*, 43 Wn. App. at 870 (citing *Bremmeyer v. Peter Kiewit Sons Co.*, 90 Wn. 2d 787, 585 P.2d 1174 (1978)). The *Martin* opinion goes on to say that there are times when the literal expression of legislation may be inconsistent with the general objectives or policy behind it. *Martin*, 43 Wn. App. at 870.

The *Martin* opinion summarizes Mr. Ritter’s position in this case. While the statute talks about good character and reputation, it is meant to protect the public from incompetent engineers. See RCW 18.43.010. It also requires that, in order to be disciplined by the Board, the act in question is “relating to the practice of the person’s profession or operation of the person’s business” or is “professional conduct.” See RCW 18.235.130(1) and RCW 18.43.105(10). Here, there is no evidence in the record and no finding of fact by the Board that the act of child molestation relates to the practice of Mr. Ritter’s profession, the operation of his business, or involved “professional conduct.”

In the proceedings below, the State argued that case law indicates that the Board had the authority to suspend Mr. Ritter's license due to some general standard of good character, reputation, or trustworthiness. However, the two licensing statutes at issue both require that the conduct for which the licensee is being disciplined either is professional conduct or relates to the practice of the persons profession. *See* RCW 18.235.130(1) and RCW 18.43.105.

The case law, which was cited below, is also illustrative of the requirement that the act purporting to constitute unprofessional conduct should relate to the licensee's business or profession or be "contrary to accepted professional conduct". *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d 720, 818 P.2d 1062 (1991) was an appeal of a decision of the Washington State Medical Disciplinary Board to discipline a doctor under a statute very similar to RCW 18.235.130. The statute in question contained language requiring the unprofessional conduct be related to the "practice of the person's profession." *See* RCW 18.130.180. In *Haley*, Dr. Haley, a 66-year-old surgeon, had operated on a 15 year old girl when she required emergency removal of her spleen due to a car accident. *Haley*, 117 Wn.2d at 722-723. When the juvenile patient, referred to in *Haley* only as "M.", returned for a visit, Dr. Haley gave her alcohol and kissed her on the cheek. *Id.* at 723. She returned again, and Dr. Haley again gave

her alcohol. *Id.* This time, the physical relationship got more serious and the two engaged in sexual foreplay in a room used to receive patients. *Id.* The sexual relationship eventually evolved into M. moving out of her parent's house and into a beach house that Dr. Haley had access to. *Id.* at 725. Dr. Haley would keep the house stocked with alcohol, and replenish the supplies whenever they ran low. *Id.* Eventually, the relationship got to the point that M. felt "it just seemed like we were just drinking and having sex." *Id.* In addition to the sexual component of the relationship, a clinical psychologist determined that the M. had become an alcoholic over the course of the affair. *Id.*

The Medical Disciplinary Board found, and the court in *Haley* agreed, that this conduct "constituted moral turpitude, dishonesty, or corruption relating to the practice of his profession" under RCW 18.130.180(1). *Id.* at 727. The court did not, however, agree that the conduct amounted to sexual contact with a patient because M. was not Dr. Haley's patient at the time of the sexual relationship. *Id.* at 728. The court recognized "that the sexual relationship occurred in close proximity to the doctor-patient relationship," but felt that "proximity is not enough." *Id.* at 729. It held that "[i]n order to find a violation of RCW 18.130.180(24), the Board must be prepared to *make the factual finding* that the doctor-

patient relationship actually existed at the time of the sexual contact,” and that “[n]o such fact finding was made here.” *Id.* at 730 (emphasis added).

The court also recognized that in order to find a violation under RCW 18.130.180(1), the Board must find facts to show that the conduct is “related to the practice of the profession.” *Id.* at 731. The court held that “related to” means “that the conduct must indicate unfitness to bear the responsibilities of, and to enjoy the privileges of, the profession.” *Id.* The court noted that the conduct “may indicate unfitness to practice a profession or occupation without being directly related to the specific skills need for that practice” because, depending on the profession and the facts, it may raise concerns that “the individual may abuse the status of being” a professional in such a way as to harm members of the public. *Id.* at 733.

The court also held that conduct also demonstrates unfitness to practice as a physician “if it lowers the standing of the medical profession in the public’s eyes.” *Id.* The rationale for this is that “[t]rust is essential to ensure treatment will be accepted and advice followed.” *Id.* at 732. This portion of the opinion is inapplicable to professional engineers, because the public does not accept their treatment and follow their advice in the same sense as a patient does a physician.

The court stated that Dr. Haley’s conduct “indicates unfitness to practice medicine in two ways: it raises concerns about his propensity to

abuse his professional position, and it tends to harm the standing of the profession in the eyes of the public, which both lead to reasonable apprehension about the public welfare.” *Id.* at 736. Again, it is important to note that harm to the standing of the profession makes the conduct “relate to” the practice of medicine only because trust is essential to the doctor-patient relationship. *Id.* at 732. Engineers require no such public trust to effectively pursue their profession.

There are two other aspects of the Haley discussion which are illustrative of the “related to” requirement. First, the court stated that the Board must “make a factual finding” that the required elements of the statute exist. *Id.* at 730. Here, the Board made no factual finding that indicates Mr. Ritter’s conduct was in any way related to the practice of his profession or was “professional conduct” as used in RCW 18.43.105(10). Second, in order to satisfy the “related to” requirement, conduct which does not directly relate to the specific skills required of the profession must indicate that “the individual may abuse the status of being” a licensed professional. *Id.* at 731. Again, the Board made no factual finding which would indicate that Mr. Ritter’s conduct indicates he did or will abuse his status as a licensed P.E.

In this case, Mr. Ritter’s criminal behavior was between him and a minor who lived in his home. It had nothing to do with the engineering

profession. What Mr. Ritter did was wrong, and he is paying the price for his behavior for the rest of his life. However, what he did cannot be attributed to anything to do with the engineering discipline.

In re Disciplinary Proceeding of Day, 126 Wn. 2d 527, 173 P.3d 915 (2007), was cited below for the proposition that because the crime of child molestation involves a breach of trust in the general sense, the acts at issue here relate to the practice of engineering. *Day* involved an attorney who was convicted of molesting a former client. *Id.* at 530. *Day*, who was also a pro tem judge, initially represented D.J., his victim, on a criminal matter when D.J. was nine years old. *Id.* at 532. *Day* used his position as an attorney and judge to gain access to D.J. and to gain the trust of D.J. and D.J.'s mother. *Id.* at 533 (stating that "the only reason she allowed *Day* to pursue a relationship with D.J. was that *Day* was an attorney and a judge."). *Day* molested D.J. at the age of 11 while D.J. was at a sleepover at *Day*'s house. *Id.* at 532.

The court in *Day* was addressing what the appropriate sanction was, under the Rules of Professional Conduct, for an attorney convicted of molesting a juvenile former client through use of the attorney-client relationship to gain access to the victim. The portion of the opinion which dealt with "trust" was discussing RPC 8.4(b), which states, in relevant part,

that it is misconduct for an attorney to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or ...” RPC 8.4(b).

Day is distinguishable from the present case in two main ways. First, the statutes at issue are different in one very important aspect: RPC 8.4(b) refers to the attorney’s character as a person in general (not necessarily related to the practice of law), while RCW 18.235.130(1) requires that the conduct in question is “relating to the practice of the person’s profession or operation of the person’s business” and RCW 18.43.105(10) refers to “accepted professional conduct.” Trust, in the sense of being able to trust your attorney, being able to trust judges in a general sense, and being able to place the public’s trust in the legal profession’s honesty, is the central focus of the statute at issue in *Day*. See RPC 8.4(b). There is no such room for analysis of trust in a general sense under RCW 18.235.130(1) and RCW 18.43.105(10) because the conduct at issue must in some way be “relating to the practice of the person’s profession or operation of the person’s business” or be related to “accepted professional conduct.”

Second, in *Day* the conduct *did* directly relate to the licensee’s profession and operation of his business. *Day* used his position as judge and attorney to gain access to D.J., and used the positions to gain the trust of his victim and his victim’s mother. *Day*, 126 Wn. 2d at 533. One of the

central points of the court's analysis was that Day's positions at attorney and judge were used gain the trust of D.J. and his mother. *See Id.* at 533.

Another case cited by the State below is *Greenen v. Bd. Of Accountancy*, 16 Wn. App. 824, 110 P.3d 224 (2005). In *Greenen*, the Board of Accountancy disciplined Greenen for falsifying her employee benefits application while she worked as an account manager at the Port of Vancouver. *Id.* at 827-828. While she was not acting as a CPA at her job with the Port, Greenen was responsible for overseeing the preparation of financial statements and supervised employees with accounting duties. *Id.* at 827.

Statutory interpretation and legislative history showed that the statute in question in *Greenen*, RCW 18.04.295, "clearly provides the Board jurisdiction over dishonest conduct by persons not performing public accounting." *Id.* at 835. The court held that the Board could discipline Greenen even though her conduct did not occur while she was acting in her CPA capacity because "Greenen was employed by a state agency as an account manager with certain fiscal responsibilities, she was a licensed CPA, and yet she consistently and dishonestly obtained medical benefits for an unqualified person at her employer's expense." *Id.* at 837. It further stated that "[h]er refusal to recognize that her dishonesty and

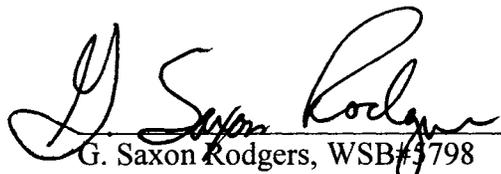
fiscal irresponsibility cannot be endorsed by the CPA profession and the Board certainly recommends that she review the profession's ethics." *Id.*

Again, *Greenen* differs from the case at issue here. *Greenen's* conduct clearly implicated dishonesty that related directly to her status as a licensee. Specifically, *Greenen* committed what amounts to financial fraud ("fiscal irresponsibility" in the court's terms) and was a licensed CPA. Further, the Board made specific findings of fact which showed how the conduct related to *Greenen's* status as a licensee. The Board specifically found that *Greenen* was misleading in filling out her benefits paperwork and that she had repeatedly misrepresented her marital status in order to gain benefits to which she was not entitled. *Id.* at 836. These findings of fact specifically show that *Greenen* was dishonest in her fiscal responsibilities and that she was intentionally defrauding her employer. *See Id.* at 837 (stating that *Greenen's* argument "ignores her fiscally dishonest and misleading conduct..."). Findings of fact showing that a CPA is guilty of financial fraud, committed in the course of her professional employment, certainly show that the conduct is related to her professional conduct (which, in general, involves filing of financial reports). In the present case, the Board made no specific findings of fact to show that Mr. Ritter's conduct relates to the practice of engineering or involves professional conduct.

V. CONCLUSION

The Board's decision in this case is not supported by substantial evidence, or in fact any evidence, when viewed in light of the entire record. *See* RCW 34.05.570(3)(e). The Board has erroneously interpreted the law by suspending Mr. Ritter's license solely because of his convictions, and without any showing that the convictions relate to the practice of his profession or involve professional conduct. *See* RCW 34.05.570(3)(d), RCW 18.235.130(1), and RCW 18.43.105(10). Finally, the Board's suspension is arbitrary and capricious, because it is not based on facts but solely upon the nature of Mr. Ritter's convictions and upon public perceptions and emotions. *See* RCW 34.05.574(3)(i). The Court must look past the general public hysteria regarding "sex offenders" and apply the law to the facts. The facts do not support revocation of Mr. Ritter's professional engineer license.

Respectfully submitted this 16th day of March, 2010.


G. Saxon Rodgers, WSB#3798
Attorney for Appellant Ritter

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

DENNIS RITTER,)
)
 Appellant,)
)
 vs.)
)
 STATE OF WASHINGTON,)
 BOARD OF REGISTRATION FOR)
 PROFESSIONAL ENGINEERS)
 AND LAND SURVEYORS,)
)
 Respondent.)
 _____)

NO. 40010-3-II
AFFIDAVIT OF
SERVICE

FILED
COURT OF APPEALS
DIVISION II
10 MAR 18 PM 12:39
STATE OF WASHINGTON
BY _____
DEPUTY

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

CATHERINE HITCHMAN, being first duly sworn on oath, deposes and states:

That I am now and at all times herein mentioned was a citizen of the United States, a resident of the State of Washington, and over the age of eighteen (18) years and not a party to or interested in the above-entitled matter.

I certify that on the 17th day of March, 2010 I served a copy of Appellant's Brief, by U.S. Mail, on the following:

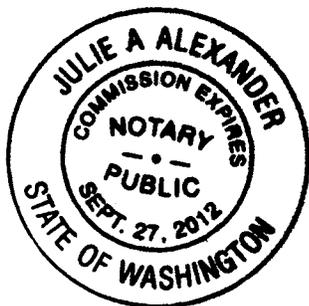
ORIGINAL

Jody Lee Campbell
Assistant Attorney General
P.O. Box 40110
Olympia, WA 98504-0110

DATED this 17th day of March, 2010.

Catherine Hitchman
Catherine Hitchman

SIGNED AND SWORN to before me this 17th day of March, 2010,
by Catherine Hitchman.



Julie Alexander
NOTARY PUBLIC in and for the State of
Washington, residing at Shelton.
My commission expires: 9-27-12