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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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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.

REPLY BRIEF OF APPELLANT DENNIS RITTER

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ORIGINAL

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RCW 18.235.130(1). 2, 3, 4, 6

I. INTRODUCTION

The Appellant, Dennis Ritter, (hereinafter “Ritter”) has filed his initial brief. The Board of Registration for Professional Engineers and Land Surveyors (hereinafter “Board”) filed its responsive brief. This brief is Ritter’s reply to the Board’s responsive brief.

Ritter’s reply brief is focused on the legal arguments set forth in the Board’s responsive brief.

II. ARGUMENT

2.1 The Board cannot rely upon RCW 18.43.040(2) to support the revocation of Ritter’s license. There are two basic fallacies with the Board’s approach to trying to substantiate revocation of Ritter’s license. The initial problem arises with the Board’s reliance on RCW 18.43.040(2).

That statute reads as follows:

No person shall be eligible for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, who is not of good character and reputation.

RCW 18.43.040(2).

Reliance on this statutory provision is misplaced. This statute deals with initial registration by any applicant for board certification as a professional engineer. The statute that addresses disciplinary action for the professional engineer is set forth in Chapter 18.235 RCW. 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).

Suspension of Ritter’s license, pursuant to RCW 18.235.130(1) requires substantial evidence to support a finding of fact and conclusion of law that Ritter’s conduct relates to the practice of his profession or the operation of his business.

The Board tries to bypass this requirement by saying that the “good character” language of RCW 18.43.040(2) applies to RCW 18.43.105(10), thereby bootstrapping themselves into a basis for suspension that does not exist. RCW 18.43.105(10) talks about acts which are customarily regarded as being contrary to accepted professional conduct or standards generally expected of those practicing professional engineering or land surveying. *See* RCW 18.43.105(10).

If the Board’s argument was valid, they could effectively circumvent the requirements of RCW 18.235.130(1), and simply interpret

the sanction statute as meaning revocation could occur simply upon conviction. The requirements to sanction a licensee under RCW 18.235.130(1) cannot be ignored as a matter of fact or law. There is simply no evidence in the record, presented by the Board, that Ritter is unable to perform his professional responsibilities and duties due to his underlying conviction. In addition, there is no evidence in the record that the conduct between Ritter and his victim at his residence had any nexus or connection to his responsibilities and duties as a licensed professional engineer. This is so obvious it should not have to be stated. For this Court to approve the Board's actions, the Court would have to ignore the disciplinary requirements imposed upon the Board by the Legislature.

2.2 The Board's argument that unchallenged findings of fact require this Court to uphold its decision is fallacious. The Board's decision contains a conclusion of law not supported by findings of fact or evidence in this case. That conclusion of law is:

“3.9 Respondent's crimes are contrary to the conduct and standards generally expected of those practicing professional engineering.”

AR at page 158.

This conclusion of law is based solely on the fact of conviction. There is no evidence in the record that supports a conclusion of law that Ritter's crimes are contrary to the standards expected of practicing

professional engineers. To the contrary, the entire record, all of which was presented by Ritter, supports the opposite conclusion, that Ritter did, was, and could continue to carry out his responsibilities as a licensed engineer but for the revocation of his license by the Board.

If the Court will review pages 3 through 6 of Ritter's initial brief, (under Section III, *Statement of the Case*), and the citations to the record therein, it is uncontroverted that Ritter commendably carried out his duties as a professional engineer before, during, and after the sexual misconduct that took place in 1998.

The Board's conclusion of law referenced above is not supported by substantial evidence, is an erroneous interpretation of the mandates of RCW 18.235.130(1), and is arbitrary and capricious.

2.3 The Board has discretion, but the Board cannot ignore the law or abuse its discretion. The Board goes to some length to argue that the Court should accord substantial weight to the agency's view of the law. The Board correctly states the definition of arbitrary and capricious when it cites *Heinmiller v. Department of Health*, 127 Wn. 2d 595, 903 P.2d 433, as amended by 909 P.2d 1294 (1995), stating "the question calls for the Court to determine whether the agency has engaged in 'willful and unreasoning action, without consideration and in disregard of facts and circumstances.' " See Board's responsive brief, pages 6 and 7.

While the Board correctly states what the law is, the Board chose not to follow it in this case. No one is claiming that being a convicted sex offender is a positive attribute. However, this is not the issue before this Court. Without being redundant, the Court should reverse the decision of the Board for the reasons set forth in Ritter's initial brief as well as this reply.

The Board argues that it may use its experience and specialized knowledge to evaluate and draw inferences from the evidence, citing *Davidson v. Department of Licensing*, 33 Wn. App. 783, 785, 657 P.2d 810, (1983, review denied, 99 Wn. 2d 1011 (1983)). In *Davidson*, the licensing entity was called upon to determine if breast and genital massage by a male chiropractor on two female patients with a vibrator was appropriate chiropractic treatment. The expertise issue had to do with whether expert testimony was required for the Board to make its decision.

The *Davidson* case has no legal precedent that is applicable to this case. Any adult, licensed or unlicensed, would understand that a hands-on practice, such as chiropractic care, does not include vibrator massage of a female patient's breasts and genital area for lower back pain. Davidson's misconduct occurred during the course of carrying out his duties as a licensed treatment provider. There is no such nexus or connection between

Ritter's behavior and his responsibilities as a licensed professional engineer.

2.4 Engineering ethics do not control the licensing decision in this case. The Board spends a good deal of time in its responsive brief talking about engineering ethics and their application to this case. On page 12 of its responsive brief, the Board quotes the ethics requirement that engineers have regarding "making society a better place to live."

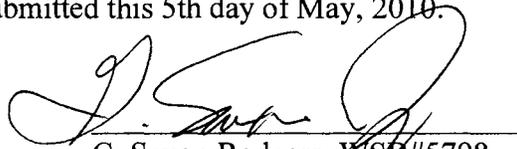
Ritter violated the criminal law in a private context. Ritter's sexual misconduct had nothing to do with his duties and responsibilities as a professional engineer. Ritter's sexual misconduct had nothing to do with whatever obligations he has, as a professional engineer, to make society a better place to live. This is simply another path that the Board has traveled down to stamp Ritter as being a bad person because of his convictions, and therefore, the Court should conclude he is a bad engineer. Again, not to be repetitive, the Board's position is contrary to the statutory mandate of RCW 18.235.130(1).

III. CONCLUSION

This Court should reverse the Board's decision. The truth is that the Board revoked Ritter's license for one reason, and one reason only: his criminal convictions. If Chapter 18.235 RCW expressly stated that conviction of Ritter's crimes was an adequate basis for revoking his

license, there would be no appeal. The fact is that it does not, and the Board's decision should be reversed.

Respectfully submitted this 5th day of May, 2010.



G. Saxon Rodgers, WS#5798
Attorney for Appellant Ritter

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

NO. 40010-3-II
AFFIDAVIT OF
SERVICE

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 7th day of May, 2010 I served a copy of Appellant's Reply Brief, by U.S. Mail, on the following:

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

DATED this 7th day of May, 2010.

Catherine Hitchman
Catherine Hitchman

SIGNED AND SWORN to before me this 7th day of ^{MAY} March, 2010,
by Catherine Hitchman.

Lori A. Holt
NOTARY PUBLIC in and for the State of
Washington, residing at CENTRALIA
My commission expires: 08-27-2011

