

Case No. 18-009-RDO continued

the date the Discipline Committee's Case Manager approves the Recommended Order, the Member's registration with APEGA shall be cancelled.

5. This matter and its outcome will be published by APEGA in any form or media as deemed appropriate and such publication will not name the Company or the Member.

Signed,

[PROFESSIONAL MEMBER A], P.ENG.

GEORGE CARAGANIS, P.ENG.

Panel Chair, APEGA Investigative Committee

DIANA PURDY, P.GEOL.

Case Manager, APEGA Discipline Committee

Date: October 16, 2018

Date: September 24, 2018

Case No.: 18-006-RDO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER OF THE CONDUCT OF MR. TERRANCE WALKER SMITH, P.ENG.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has investigated the conduct of Mr. Terrance Walker Smith, P.Eng., (the "Member") with respect to a complaint initiated by [the Complainant], dated February 7, 2017.

A. BACKGROUND

The investigation related to allegations that the Member improperly permitted documents to be authenticated or initialed or both by employees at his company, TWS Engineering Ltd. (TWS).

B. THE COMPLAINT

The Investigative Committee conducted an investigation into whether the Member improperly allowed employees under his supervision to apply his electronic stamp and signature (Allegation #1); failed to maintain control of his stamp (Allegation #2); and improperly allowed employees under his supervision to apply his initials onto building schedules (Allegation #3).

C. AGREED STATEMENT OF FACTS

1. Certain employees at TWS had access to the Member's electronic stamp and signature through the TWS AutoCAD system.
2. The Complainant estimated that he applied the Member's electronic stamp and signature to professional documents approximately 30 times. The Complainant observed other employees apply the Member's electronic stamp and signature to documents.
3. The Member requested that certain employees cross out portions of building schedules that did not apply to a given project and apply the Member's initials, after which the Member would review the schedules. However, the Complainant stated that on many occasions the Member did not request to review the documents prior to them being sent to clients.
4. The Complainant notified the Member about his concern with the process of authentication and provided him with a copy of the *APEGA Practice Standard for Authenticating Professional Documents* (the Practice Standard).

(i) Allegation #1: Whether the Member improperly allowed his employees to apply his electronic stamp and signature.

5. The Member granted employees access to his electronic stamp and signature. These employees consisted of professional members, E.I.T.s, C.E.T.s, technicians, technologists, and administrators.
6. The Member incorrectly interpreted the *Engineering and Geoscience Professions Act* (the Act) the Practice Standard, the *General Regulation*, and the *APEGA Guideline for Ethical Practice* (the Guideline). The Member wrongly understood that the parties making use of the stamp were under his "direct supervision and control."
 - a. As per Section 78(1) of the Act, "A professional member, licensee or restricted practitioner shall, in accordance with the regulations, (a) sign documents or records, and (b) stamp or seal documents or records."
 - b. As per Section 54(3) of the *General Regulation*, "When a stamp or seal is applied, the professional member or licensee to whom it was issued shall ensure that the stamp or seal is accompanied with that person's signature and the date on which the stamp or seal is applied." As per the Practice Standard, "A professional member shall personally sign the documents to which his or her stamp has been applied."
 - c. As per Section 4.2.4 of the Guideline, "Professionals shall only stamp and sign reports, plans or documents that they have prepared or that have been prepared under their direct supervision and control. In the case of work prepared by others, they shall only stamp and sign after having thoroughly reviewed the work and accepted responsibility for it." Additionally, Section 4.2.4 of the Guideline states, "If other members of the engineering or geoscience team prepared the documents, the responsible professional shall have exercised sufficient supervision and control, or have thoroughly reviewed the document, so that he or she can sign based on personal knowledge."
 - d. As per the Practice Standard, "A professional member shall personally sign the documents

to which his or her stamp has been applied." Additionally, as per the Guideline, "Professionals shall only stamp and sign reports, plans or documents that they have prepared or that have been prepared under their direct supervision and control. In the case of work prepared by others, they shall only stamp and sign after having thoroughly reviewed the work and accepted responsibility for it."

(ii) Allegation #2: Whether the Member failed to maintain control of his stamp.

7. There were limited controls in place at TWS between 2006 and February 2017 to prevent the misuse of the Member's electronic stamp and signature. Upon review, the Member understands that greater control of both digital and wet-stamps is required by the Member.
8. The Member incorrectly interpreted the *General Regulation*, the Practice Standard and the Guideline:
 - a. As per Section 54(1) of the *General Regulation*, "A stamp or seal issued to a professional member or licensee must at all times remain under that person's direct control and must be applied by the professional member or licensee, or by a person acting under the professional member's or licensee's immediate and direct control, to all final plans, specifications, reports or documents of a professional nature (a) that were prepared by the professional member or licensee or under the professional member's or licensee's supervision and control, or (b) that were prepared by another person in circumstances where the professional member or licensee has thoroughly reviewed them and accepted professional responsibility for them."
 - b. As per Section 54(2) of the *General Regulation*, "No person shall permit a stamp or seal to be physically located in a manner that would allow its use by a person other than the professional member or licensee to whom it was issued."
 - c. As per the Practice Standard, "A professional member is responsible for maintaining custody and control of his or her stamp at all times."
 - d. As per Section 4.2.4 of the Guideline, "As a matter of practice, professionals shall keep their stamps and seals under control."

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(iii) Allegation #3: Whether the Member improperly allowed his staff to apply his initials onto Alberta Building Code (ABC) schedules.

9. The Member stated that certain TWS employees were expected to strike out irrelevant portions of ABC schedules and to handwrite the Member's initials in those areas. This is a form of applying the Member's signature, and the Member is not permitted to allow others to apply his signature to professional documents.
10. There is no evidence that the actions of the Member resulted in the approval of professional documents that impacted public safety.
11. The Member attended the APEGA Permit to Practice Seminar in June 2017 in order to remain current on legal responsibilities and expectations as the Responsible Member for TWS.

D. CONDUCT

12. The Member freely and voluntarily admits that he breached the Act, the Practice Standard, the *General Regulation*, and the Guideline by improperly allowing employees to apply his electronic stamp and signature to professional documents on his behalf.
13. The Member acknowledges that he breached the *General Regulation*, the Practice Standard, and the Guideline by failing to maintain control of his stamp.
14. The Member acknowledges that he breached the *General Regulation*, the Practice Standard, and the Guideline by improperly allowing his employees to handwrite his initials onto ABC schedules.
15. The Member also acknowledges that the conduct described above constitutes unskilled practice and unprofessional conduct as defined in Section 44(1) of the Act.
16. The Member further acknowledges that the conduct described above breaches Rule of Conduct #4 of the *Code of Ethics*:

"4. Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices."

E. RECOMMENDED ORDERS

17. On the recommendation of the Investigative Committee, and by agreement of the Member with that recommendation, following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:
 - a. The Member will receive a letter of reprimand to be maintained permanently on the Member's APEGA file.
 - b. The Member will pay a fine of \$7,000 within 60 days from the date this Order is approved by the Discipline Committee Case Manager. If the fine is not paid within 60 days from the date this Order is approved, the Member shall be suspended from the practice of engineering until the fine is paid.
 - c. The Member shall successfully complete the National Professional Practice Examination within one year from the date that this Order is approved by the Discipline Committee Case Manager. If there are extenuating circumstances, the Member may apply to the Director of Enforcement for an extension prior to the deadline. Any extension will be granted within the sole discretion of the Director of Enforcement. If the examination is not successfully completed by the above-noted date, the Member shall be suspended from the practice of engineering until the successful examination is complete.
 - d. This matter and its outcome will be published by APEGA as deemed appropriate and such publication will name the Member.

Signed,

TERRANCE WALKER SMITH, P.ENG.

JOHN DIIWU, P.ENG.

APEGA Investigative Committee

KEN LIU, P.ENG.

Case Manager, APEGA Discipline Committee

Date: September 24, 2018