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7
8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
9 **GEOLOGISTS**
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1134-A

12 **MARK DURRELL SANDSTROM**

A C C U S A T I O N

13 3421 Indian Mesa Drive
Thousand Oaks, CA 91360

14 **Land Surveyor License No. L 6847**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Richard B. Moore, PLS (Complainant) brings this Accusation solely in his official
20 capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and
21 Geologists, Department of Consumer Affairs.

22 2. On or about June 26, 1992, the Board for Professional Engineers, Land Surveyors,
23 and Geologists issued Land Surveyor License Number L 6847 to Mark Durrell Sandstrom
24 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on September 30, 2016, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board for Professional Engineers, Land
3 Surveyors, and Geologists (Board), Department of Consumer Affairs, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

6 4. Section 118, subdivision (b), of the Code provides that the suspension/expiration of a
7 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
8 period within which the license may be renewed, restored, reissued or reinstated.

9 **STATUTORY PROVISIONS**

10 5. Section 8762 **“Records of surveys; Filings”** provides, in pertinent part:

11 (a) Except as provided in subdivision (b), after making a field survey in
12 conformity with the practice of land surveying, the licensed surveyor or licensed civil
13 engineer may file with the county supervisor in the county in which the field survey
14 was made, a record of the survey.

15 (b) Notwithstanding subdivision (a), after making a field survey in
16 conformity with the practice of land surveying, the licensed land surveyor or licensed
17 civil engineer shall file with the county surveyor in the county in which the field
18 survey was made a record of the survey relating to land boundaries or property lines,
19 if the field survey discloses any of the following:

20 (1) Material evidence or physical change, which in whole or in part does
21 not appear on any subdivision map, official map, or record of survey previously
22 recorded or properly filed in the office of the county recorder or county surveying
23 department, or map or survey record maintained by the Bureau of Land Management
24 of the United States.

25 (2) A material discrepancy with the information contained in any
26 subdivision map, official map, or record of survey previously recorded or filed in the
27 office of the county recorder or the county surveying department, or any map or
28 survey record maintained by the Bureau of Land Management of the United States.
For purposes of this subdivision, a "material discrepancy" is limited to a material
discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially
alternate positions of lines or points, shown on any subdivision map, official map, or
record of survey previously recorded or filed in the office of the county recorder or
the county surveying department, or any map or survey record maintained by the
Bureau of Land Management of the United States.

(4) The location, relocation, establishment, reestablishment, or
retracement of one or more points or lines not shown on any subdivision map, official
map, or record of survey, the positions of which are not ascertainable from an
inspection of the subdivision map, official map, or record of survey.

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(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

6. Section 8764 **“Records of survey; Particulars to be shown”** sets forth, in pertinent part that:

The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

7. Section 8780 **“Suspension or revocation of licenses; Vote required; Grounds; Period of Suspension”** states, in relevant part:

The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any land surveyor licensed under this chapter or any civil engineer licensed under the provisions of Chapter 7 (commencing with Section 6700) who is legally authorized to practice land surveying and make findings thereon.

By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any land surveyor licensed under this chapter or civil engineer licensed under the provisions of Chapter 7 (commencing with Section 6700), who is legally authorized to practice land surveying on any of the following grounds:

...

(b) Any negligence or incompetence in his or her practice of land surveying.

...

(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

...

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

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1 **REGULATORY PROVISIONS**

2 8. Title 16 of the California Code of Regulations (hereinafter CCR) section 404 states,
3 in relevant part:

4 . . .

5 (dd) For the sole purpose of investigating complaints and making findings
6 thereon under Sections 6775 and 8780 of the Code, "negligence" as used in Sections
7 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of
8 professional engineering or land surveying, to use the care ordinarily exercised in like
9 cases by duly licensed professional engineers and land surveyors in good standing.

10 9. 16 CCR section 476 provides in relevant part:

11 To protect and safeguard the health, safety, welfare, and property of the
12 public, every person who is licensed by the Board as a professional land surveyor
13 or civil engineer legally authorized to practice land surveying, shall comply with
14 this Code of Professional Conduct. A violation of this Code of Professional
15 Conduct in the practice of professional land surveying constitutes unprofessional
16 conduct and is grounds for disciplinary action pursuant to Sections 8780 of the
17 Code. This Code of Professional Conduct shall be used for the sole purpose of
18 investigating complaints and making findings thereon under Section 8789.

19 (a) A licensee shall provide professional services for a project in a
20 manner that is consistent with the laws, codes, ordinances, rules and regulations
21 applicable to that project.

22 . . .

23 (c)(7) A licensee shall only express professional opinions that have a
24 basis in fact or experience or accepted land surveying principles.

25 . . .

26 **COST RECOVERY**

27 10. Section 125.3 of the Code provides, in pertinent part, that the board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Negligence)

11 11. Respondent's license is subject to disciplinary action under Sections 8780,
12 subdivision (b), in conjunction with Sections 8762, 8764, subdivisions (a) and (b), 16 CCR 404,

1 subdivision (dd) and 16 CCR 476, subdivisions (a) and/or (c)(7) by committing negligence in the
2 practice of professional land surveying, the underlying circumstances of which are as follows:

3 12. In June of 2008, Respondent, who is President of Land & Air Surveying, Inc. (LASI)
4 was contacted and/or employed by Owner S.B. to survey the project property adjoining the
5 complainants' (R.F.'s and D.F.'s)¹ property on their southwesterly side, 19820 Pacific Coast
6 Highway, Malibu, CA 90265 (the project). During July and August of 2008, Respondent's
7 survey crew performed the field work for the project.

8 13. On or about July 17, 2008, Respondent set a survey monument. No document or map
9 was filed and/or recorded by Respondent depicting what, in 2008, that monument was supposed
10 to represent. The setting of Respondent's questionable monument created a costly boundary
11 dispute between R.F. and D.F. and their neighbor, S.B. The complainants allege that
12 Respondent's monument was set inside their property, as indicated by long-standing, plainly
13 visible, old monuments in existence on the property since at least 1985 and by use and lines of
14 occupation dating back to construction in 1959. The complainants were required to hire an
15 attorney to respond to a letter from S.B.'s attorney, which claimed that LASI's newer
16 monuments established that the one-foot strip of land belonged to S.B., that complainants could
17 no longer use the beach stairs they had been using since they moved in 30 years ago, and
18 threatened a legal action against complainants for encroachment. Complainants examined the
19 property/title deeds. S.B.'s property deed specifically excludes a one-foot strip along the
20 "disputed" boundary line and complainants' deed specifically grants them a Parcel 2, which is
21 comprised of that same one-foot strip along the same exact line. It appeared that Respondent
22 relied upon an old 1957 tract map without researching, examining and/or obtaining the property
23 deeds before setting his monuments.

24 14. In 2014, Complainants arranged for an architectural survey, which found
25 Respondent's questionable monument and noted it as "NO REFERENCE". The subsequent

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27 ¹ The initials of individuals referred to herein are used to protect their privacy, but upon a
28 timely and proper discovery request from Respondent, Complainant will provide documents
which reveal their identities.

1 survey also noted that the position of the questionable monument was not exactly one foot offset
2 from the property boundary lines, as described in the deeds or directly opposite from another
3 found monument, presumably the monument for which is being witnessed. The unofficial corner
4 record provided by Respondent fails to provide a bearing between itself and the monument to
5 which it is witness. On or about March 9, 2015, R.F. and D.F. notified S.B. that complainants'
6 survey found another monument, located southwest of Respondent's questionable monument,
7 which was nearly on the legal boundary line as described in the property deeds, and explained the
8 descriptions in the title deeds for the two properties.

9 15. On or about March 10, 2015, R.F. and D.F. contend that Respondent's monument in
10 question had been removed, along with their "1' O/S" notation. New orange paint was sprayed
11 around the old, long-standing monuments.

12 16. On or about March 12, 2015, the Board received a complaint from R.F. and D.F.
13 against Respondent, indicating that Respondent failed to submit property documentation for a
14 survey monument, and then allegedly removed it in March, 2015.

15 17. On or about April 7, 2015, a Board employee sent Respondent a letter notifying him
16 about the complaint of R.F. and D.F. and requesting that he submit a written response, along with
17 his entire file for the project, by no later than May 8, 2015.

18 18. On or about May 5, 2015, the Board received additional documents from the
19 complainants related to the project.

20 19. On or about May 8, 2015, the Board received documents from Respondent which
21 included a letter dated May 6, 2015, copies of contracts, reference maps, deeds, field notes, and a
22 copy of his Corner Record for the project. In Respondent's letter, Respondent confirmed that a
23 Corner Record prepared at the time of the setting of the survey monument in question is not on
24 file with the County and that his records show that one was never submitted for a review.
25 Respondent did, however, submit a copy of a Corner Record that was allegedly prepared on
26 August 19, 2008, depicting two monuments set on July 19, 2008. Additionally, corresponding
27 field notes are dated July 17, 2008. One of the two monuments shown is the monument in
28

1 question, which is described as follows: “SET CONC. NAIL & TAG PLS 6847 IN WOOD
2 DECK AT 1’ WITNESS TO FD. POINTS ALONG PROP LINE.”

3 20. On or about June 9, 2015, a Board employee sent Respondent an email, requesting
4 that he submit an Organization Record for LASI, by no later than June 12, 2015. On or about
5 June 10, 2015, the Board received an Organization Record form for LASI from Respondent’s
6 Project Manager, which lists Respondent as the only Licensed Land Surveyor for LASI, in
7 responsible charge of land surveying services for this business.

8 21. On or about June 11, 2015, the Board referred file materials related to this case to a
9 licensed land surveyor for an independent expert review and report.

10 22. On or about July 10, 2015, a Board employee sent Respondent an email, requesting a
11 copy of the “General Provisions” that his Contracts and Proposals refer to as being incorporated,
12 since it did not appear that it was submitted to the Board with Respondent’s initial submission of
13 project documents dated May 6, 2015. On or about July 13, 2015, the Board received from
14 Respondent’s Project Manager a copy of the “General Provisions” which they had requested.

15 23. On or about July 13, 2015, a written report dated July 9, 2015 was received by the
16 Board from the Board’s independent expert. The expert written report noted that the contract for
17 the project did not mention filing a Corner Record, but did indicate a Record of Survey would be
18 filed “if required by law.” The independent expert opined that Respondent was negligent in that
19 he failed to prepare a Record of Survey and submit it to the County for review, within 90 days of
20 setting the monument in question, as required by Section 8762 of the Professional Land
21 Surveyors’ Act. Furthermore, the expert opined that Respondent’s negligence, in failing to
22 provide the standard of care expected under like circumstances by duly licensed Land Surveyors,
23 was a violation of Section 8780, subdivision (b), caused by his failure to document establishment
24 of the monument set in July 2008, resulted in collateral damage and monetary losses for
25 neighbors R.F., D.F. and S.B., due to their heated dispute over the unresolved property boundary
26 line.

27 24. On or about July 28, 2015, an employee of the Board spoke with Complainants’
28 neighbor, S.B., who had hired Respondent to perform the survey in question, about the project.

1 Between on or about August 6, 2015 and October 6, 2015, a Board employee sent emails to S.B.,
2 requesting answers to nine questions regarding the project with Respondent, and followed-up
3 with telephone calls to S.B. On or about October 7, 2015, the Board received an email message
4 from S.B. answering the nine questions in the August 6, 2015 email from the Board.

5 25. On or about November 10, 2015, the Board received a supplemental written report
6 dated November 6, 2015 from the Board's independent expert, in which he noted that he had
7 considered additional documents which he received after he prepared his initial report. The
8 Board's independent expert revised his original report, based upon the new information, and
9 added a new finding and opinion that Respondent was not only negligent in his practice of land
10 surveying with respect to the project, in that he failed to document his monument and then
11 removed it, but he was also incompetent in that he failed to research property deeds at the
12 inception of his land survey, as would be the standard of care for such a survey.

13 26. Respondent was negligent and failed to provide the standard of care expected under
14 the circumstances, in that he failed to submit his corner record in a timely manner, as the
15 Respondent claims he had intended, removed his monument and did not keep any record of any
16 submittal.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Incompetence)**

19 27. Respondent's license is subject to disciplinary action under Section 8780, subdivision
20 (b) and 16 CCR 476, subdivision (a), for committing incompetence in the practice of professional
21 land surveying, in that he had failed to research, review and/or obtain property deeds for the
22 Malibu property of R.F. and D.F. and for S.B.'s adjacent property at the inception of his land
23 survey and before setting his monuments, as would be the standard of care for such a survey, as
24 set forth in greater detail in Paragraphs 11-26 above, which are incorporated by reference herein
25 as though set forth in full.

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THIRD CAUSE FOR DISCIPLINE

(Violations of the Land Survey Laws)

28. Respondent’s license is subject to discipline for violating the land survey laws as set forth in Sections 8780, subdivisions (d) and/or (h), in that Respondent violated Sections 8780, subdivision (b), 8762, subdivision (b)(5), and 8764, subdivisions (a) and (b), and 16 CCR 476, subdivisions (a) and/or (c)(7) of the land surveyor law because he failed to timely file with the County a record of survey after installing a boundary monument and failed to obtain property deeds prior to completing his survey of the project, in violation of Section 8780, subdivision (b) and 16 CCR 476, subdivision (a), as discussed in greater detail in Paragraphs 11-26 above, which are incorporated by reference herein as though set forth in full.

DISCIPLINE CONSIDERATIONS

29. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about February 18, 2005, in a prior disciplinary action entitled “*In the Matter of the Accusation Against Mark Durrell Sandstrom*” before the Board for Professional Engineers, Land Surveyors, and Geologists, in Case Number 746-A. In that action, Respondent's license was revoked, the revocation was stayed, and Respondent was placed on probation for two years, with terms and conditions, for allegations that he had been negligent and incompetent in failing to include in a 1995 record of survey plat and all of the necessary and adequate information. That decision is now final and is incorporated by reference as if fully set forth.

PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers, Land Surveyors, and Geologists issue a decision:

1. Revoking or suspending Land Surveyor License Number L 6847, issued to Mark Durrell Sandstrom;
2. Ordering Mark Durrell Sandstrom to pay the Board for Professional Engineers, Land Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/25/16

Original Signed

RICHARD B. MOORE, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and
Geologists
Department of Consumer Affairs
State of California
Complainant

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