

ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2015), due to a felony conviction for aggravated assault in 2010 in Hines County, Mississippi. (BE # 2). The Board's Complaint was assigned Case No. 2015-16-A. (BE # 3).

3. By Notice dated August 1, 2016, Respondent was notified via Certified and First Class Mail at his address of record of the date and time of a public hearing to be held concerning his alleged violations of the Board's licensure act and administrative rules (BE #4), which were specified in detail in the Board's Charges accompanying the Notice (BE #3). The Board's Charges were signed by the Board's Executive Director on August 1, 2016, and contained a single charge, alleging that Respondent plead guilty to the felony charge of Aggravated Assault 97-3-7(2)A in the State of Mississippi on January 22, 2010, and was sentenced to serve ten years in the custody of the Mississippi Department of Corrections (suspended) and five years supervised probation. (BE #3).

4. The Board's Charges alleged that such acts constituted possible violations of ALA. CODE § 34-11-11(a)(2) (1975 as amended) (any gross negligence, incompetency, violation of the rules of professional conduct or misconduct in the practice of engineering), ALA. CODE § 34-11-11(k)(2) (1975 as amended) (requiring revocation of the certificate of any certified intern found to have been convicted of any felony, whether or not related to the practice of engineering), and ALA. ADMIN. CODE r. 330-X-14-.06(a)1 (2015) (violation of any provision of Alabama law or the Board's rules governing the practice of engineering). (BE #3).

5. The Notice and Board's Charges complied in all respects with the requirements of ALA. CODE § 41-22-12 (1975 as amended) and ALA. ADMIN. CODE r. 330X-16-.03 (2015) and sufficiently apprised Respondent of the nature of the charges against him.

6. The Notice and Charges sent to Respondent's address of [REDACTED], [REDACTED] via Certified Mail were returned to the Board office as unclaimed on August 29, 2016. The First Class Mail was not returned. (Tr. at 15-16); (BE #3, 4). Respondent did not appear at the

hearing. (Tr. at 5). In accordance with ALA. CODE § 41-22-12(d) (1975 as amended) of the Alabama Administrative Procedure Act ("AAPA"), contingent on the Board's showing that it timely provided notice to Respondent of the date and time of the hearing and that Respondent was fully apprised of the nature of the charges against him, the undersigned proceeded with the hearing in Respondent's absence. (Tr. at 6).

7. The Board solicited testimony from the following individuals at the hearing: Executive Director Regina Dinger; William R. Huett, Assistant Executive Director; and Board Investigator Robert Herbert.

8. Ms. Dinger testified regarding Respondent's licensure status, the Board's Charges and the August 1, 2016 Notice to Respondent informing him of the Charges and of the date, time and place for the hearing. (Tr. at 8-13); (BE #3, 4). Mr. Huett testified regarding the notification process and the tracking of the Notice and Charges sent to Respondent via Certified and First Class Mail. (Tr. at 14-16); (BE #3, 4).

9. Mr. Herbert testified that he investigated a complaint filed against Respondent on or about April 29, 2016, by Mr. Bill Daniels, an attorney in Mobile, Alabama, concerning Respondent's licensure status with the Board and his criminal history. (BE #5). Included with the letter were copies of correspondence from Respondent sent on or about April 22, 2016, to Mr. David F. C. Daniel, concerning ongoing litigation between the two parties, in which Respondent represented himself as a civil engineering intern (BE #6), and an Order issued by Circuit Judge W. Swan Yerger on January 22, 2010, in the matter of the State of Mississippi v. William Robert Rainey, Case No. 09-0-665-00, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, finding Respondent guilty of Aggravated Assault 97-3-7(2)A and sentencing him to ten years in the custody of the Mississippi Department of Corrections (suspended) and five years supervised probation (BE #7).

10. Respondent was notified of the Complaint, to which he responded to Mr. Herbert via e-mail

on April 26, 2016. (BE #8). Two days later, Mr. Herbert stated that Respondent called to inform him that he had never been convicted of a felony and had not violated any of the Board's rules or regulations. Mr. Daniels also provided Mr. Herbert with a copy of a criminal background check for Respondent, revealing the following additional criminal charges or convictions: violation of an injunction for protection against domestic violence in the State of Florida; battery on a law officer or firefighter in the State of Florida; and resisting arrest with violence in Florida; Respondent was listed as a repeat offender in the State of Mississippi. (BE #9).

11. On May 12, 2016, Respondent again informed Mr. Herbert via e-mail that he had not violated any Board rule or law related to the practice of engineering and that the complaint against him had been filed in retaliation for a lawsuit he had filed concerning threats against his mother. (BE #10).

12. Mr. Herbert confirmed that a conviction of Aggravated Assault in Mississippi carries with it a term of imprisonment in the county jail of not more than one year or in the penitentiary of not more than twenty years. (BE #11). Mr. Herbert further confirmed with Ms. Kelli Degnan, Court Administrator to Judge Jeff Weill, Sr., Hinds County Circuit Court, that "Aggravated Assault as charged under Miss. Code Ann. Section 97-3-7(2)A is a felony." (BE #12).

13. Mr. Herbert testified further that licensees are under a continuing duty to report any convictions on their record to the Board at the time of license renewal. On his initial Application for Fundamentals of Engineering (FE) Examination, dated May 11, 2007, Respondent disclosed that three years prior, he had been arrested and charged with violating a restraining order and resisting arrest. He stated that he pled no contest to all the charges and was convicted of two misdemeanors, for which he was currently serving probation. (BE #13).

14. Respondent's online renewal applications for November 3, 2015, and for the six previous years confirm that Respondent answered "no" to the following question each year: "Have you been convicted of a felony or misdemeanor or entered a nolo contendere plea or entered a plea to any crime under the laws of the United States since your last renewal?" (BE #14).

PROPOSED CONCLUSIONS OF LAW

1. The Alabama Legislature created the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors for the purpose of safeguarding life, health and property and promoting the public welfare with regard to the practice of engineering and land surveying within the state. ALA. CODE § 34-112(b) and (c) (1975 as amended).

2. The Board is empowered to reprimand, censure, fine or place on probation any certified engineer intern or to suspend, refuse to renew or revoke the certificate of any certified engineer intern for any gross negligence, incompetency, violation of the rules of professional conduct prescribed by the Board or misconduct in the practice of engineering. ALA. CODE § 34-11-11(a)(2) (1975 as amended). See also ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2015) of the Board's Rules of Professional Conduct, which provide that an engineer shall not violate any provision of Alabama law or the Board's rules governing the practice of engineering. In particular, ALA. CODE § 34-11-11 (1975 as amended) states:

The board shall revoke the certificate of any licensee or certified intern who has been determined to be one of the following:

(2) Convicted of or entered a plea of guilty or nolo contendere to any crime under the laws of the United States or any state or territory thereof, which is a felony, whether related to practice or not and convicted of or entered a plea of guilty or nolo contendere to any crime, whether a felony, misdemeanor or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.

3. On January 22, 2010, Respondent was adjudicated guilty of the crime of Aggravated Assault under MISS. CODE ANN. S 97-3-7(2)A in the matter of the State of Mississippi v. William Robert Rainey, Case No. 09-0-665-00, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, for which he was sentenced to ten years in the custody of the Mississippi Department of Corrections (suspended) and five years supervised probation. (BE #7). Respondent did not report this conviction to the Board or on his license renewal applications for the applicable years, as required thereunder.

4. Respondent contends that "The emphasis of [ALA. CODE § 34-11-11 (k)(2)] is in reference to 'an essential element of which is dishonestly or which is directly related to the practice of engineering Dishonestly is not an essential element of aggravated assault, therefore I am in no manner in violation of Code of Alabama 34-111 1 (k)2. Nor was the allegation of aggravated assault directly related to the practice of engineering. Again, I am not in violation of Code of Alabama 34-11-11 (k)2." (BE #10).

5. The undersigned agrees with the Board that a plain reading of ALA. CODE § 34-11-11 requires revocation of a licensee's certificate in two circumstances: (1) when the licensee has been convicted of or entered a plea of guilty or nolo contendere to any crime under state or federal law that is a felony, whether or not the crime is related to the practice of engineering; and (2) when the licensee has been convicted or entered a plea of guilty or nolo contendere to any felony, misdemeanor or other crime that includes dishonesty as an essential element of the crime or is directly related to the practice of engineering.

6. Respondent's 2010 conviction fits within the first category of offenses for which revocation of Respondent's certified engineer intern certificate is mandated under ALA. CODE § 34-11-11(k)(2) (1975 as amended), that is, conviction of a felony under Mississippi law for Aggravated Assault. It is not required that the offense be related to the practice of engineering.

CONCLUSION AND RECOMMENDATION

1. It is incumbent upon a licensee to be familiar with the requirements under Alabama law and the Board's own rules and regulations governing the practice of the profession of engineering. Respondent's duty to comply with the laws, rules and regulations governing the practice of the profession within this state required him to properly disclose this conviction.

2. As shown above, on the basis of the evidence of record and the testimony presented, it is hereby concluded that Respondent's conduct constitutes violations of ALA. CODE § 34-11-11 and -11 (1975 as amended) and ALA. ADMIN. CODE r. 330-X-14-.06(a)1. (2015).

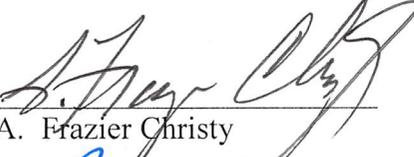
3. Accordingly, it is hereby recommended that Respondent's license to practice the profession of engineering in the State of Alabama be REVOKED in accordance therewith and that Respondent pay the cost to the Board for these proceedings, in accordance with ALA. CODE § 34-11-11 (m) (1975 as amended) and ALA. ADMIN. CODE r. 330-(-16-.06(1) (2015), within thirty (30) days of the date of a Final Order issued by the Board.

ORDER

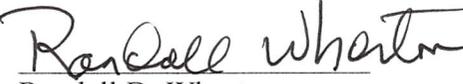
The **BOARD**, after deliberation and review, agrees with and adopts as final the Findings of Facts, and Conclusion of Law proposed by Administrative Law Judge, Dana H. Billingsley, and finds the Respondent **GUILTY** of the allegations made against him. The Board modifies the Conclusion and Recommendation of the Administrative Law Judge, and **ORDERS** the following:

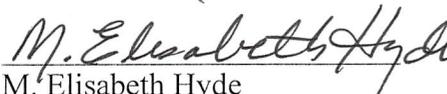
1. Respondent's Engineer Intern certificate is revoked effective the date of this Order.
2. Respondent shall pay the Board the amount of \$1,468.05 (One thousand four hundred sixty-eight dollars and five cents) as payment for the cost of the hearing within thirty (30) days of date of this Order.

ENTERED into on this date: FEB 1 2017


A. Frazier Christy


Nathan G. Johnson


Randall D. Whorton


M. Elisabeth Hyde


Richard G. Grace

RECUSED

Marc S. Barter