

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE ARIZONA STATE  
BOARD OF TECHNICAL REGISTRATION**

In the Matter of:  
  
**STEVEN O'BRIEN, P.E.**  
Holder of Professional Engineer  
License # 35209 (Mechanical)  
  
Respondent.

**OAH Docket No. 20F-P16-066-BTR  
BTR Case No. P16-066  
  
CONSENT AGREEMENT AND  
ORDER OF DISCIPLINE**

In the interest of a prompt and judicious resolution of the above-captioned matters before the Arizona State Board of Technical Registration (the "Board") and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to Arizona Revised Statutes ("A.R.S.") § 32-101, *et seq.* and Arizona Administrative Code ("A.A.C.") R4-30-120(G), the undersigned party, Steven O'Brien ("Respondent"), holder of Registration No. 35209, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

**I. RECITALS**

1. The Board has not conducted a hearing nor made a determination on the merits contained herein. Instead, the Board and Respondent have agreed to a full and final settlement of this matter in lieu of formal disciplinary proceedings, pursuant to A.A.C. R4-30-123(B).

2. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

3. Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent

1 Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such  
2 an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal,  
3 judicial review or any other administrative and/or judicial action concerning the matters  
4 set forth herein.

5 4. Respondent affirmatively agrees that this Consent Agreement shall be  
6 irrevocable.

7 5. Respondent understands that this Consent Agreement or any part of the  
8 agreement may be considered in any future disciplinary action by the Board against him  
9 or Respondent Firm.

10 6. The Consent Agreement, any record prepared in this matter, all  
11 investigative materials prepared or received by the Board and all related exhibits and  
12 materials, are public records (as defined in A.R.S. § 41-151.18) upon acceptance by the  
13 Board of this Consent Agreement and may be retained in the Board's files pertaining to  
14 this matter.

15 7. Respondent understands this Consent Agreement deals with Board case  
16 number P16-066 involving allegations that Respondent engaged in conduct that could  
17 subject him to discipline under the Board's statutes and rules. The investigation into  
18 these allegations against Respondents shall be concluded upon the Board's adoption of  
19 this Consent Agreement.

20 8. Respondent understands that this Consent Agreement is solely to settle case  
21 number P16-066, does not preclude the Department from instituting other proceedings as  
22 may be appropriate now or in the future, does not constitute a dismissal or resolution of  
23 any other matters currently pending before the Board, if any, and does not constitute any  
24 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding  
25 any other pending or future investigation, action or proceeding.

26 9. Respondent also understands that, with respect to the conduct that is the  
27 subject of this Consent Agreement, acceptance of this Consent Agreement does not  
28 preclude any other agency, subdivision, or officer of this State from instituting any other

1 civil or criminal proceedings, investigating claims, or taking legal action as may be  
2 appropriate now or in the future relating to this matter or other matters concerning  
3 Respondent, including but not limited to violations of Arizona's Consumer Fraud Act.  
4 Respondent acknowledges that, other than with respect to the Board, this Consent  
5 Agreement makes no representations, implied or otherwise, about the views or intended  
6 actions of any other state agency or officer or political subdivision of the state relating to  
7 this matter or other matters concerning Respondent.

8       10. All admissions made by Respondent in this Consent Agreement and Order  
9 of Discipline are solely for final disposition of case number P16-066 and any subsequent  
10 related administrative or enforcement proceedings or civil litigation involving the Board  
11 and Respondent in case number P16-066. Therefore, said admissions by Respondent are  
12 not intended or made for any other use, such as in the context of another state or federal  
13 government regulatory agency proceeding, civil or criminal court proceeding, in the State  
14 of Arizona or any other state or federal court.

15       11. Respondent acknowledges and agrees that, upon signing this Consent  
16 Agreement and returning this document to the Board's Executive Director, he may not  
17 revoke his acceptance of the Consent Agreement or make any modifications to the  
18 document regardless of whether the Consent Agreement has been signed on behalf of the  
19 Board. Any modification to this original document is ineffective and void unless  
20 mutually agreed by the parties in writing.

21       12. This Consent Agreement is subject to the approval of the Board and is  
22 effective only when accepted by the Board and signed on behalf of the Board. If the  
23 Board does not accept this Consent Agreement, the Board retains its authority to hold a  
24 formal administrative hearing pursuant to A.R.S. § 32-128(D). In the event that the  
25 Board does not approve this Consent Agreement, it is withdrawn, shall be of no  
26 evidentiary value, and shall not be relied upon nor introduced in any action by any party.  
27 Respondent agrees that should the Board reject this Consent Agreement and this case  
28

1 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by  
2 its review and discussion of this document or any records relating thereto.

3 13. If a court of competent jurisdiction rules that any part of this Consent  
4 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
5 shall remain in full force and effect.

6 14. Respondent agrees that any violation of this Consent Agreement may result  
7 in disciplinary action.

8 15. Respondent agrees that the Board will adopt the following Findings of Fact,  
9 Conclusions of Law, and Order.

## 10 II. FINDINGS OF FACT

11 1. The Board is the duly constituted authority for the regulation and control of  
12 the practice of engineering in the State of Arizona.

13 2. Respondent is the holder of Professional Engineer License # 35209, for  
14 Mechanical Engineering.

15 3. In or around 2010, MTM Construction, Inc. entered into a contract with  
16 Bridgers & Paxton Consulting Engineers ("Bridgers and Paxton") to provide Mechanical  
17 and Electrical Engineering consultation for energy conservation measures ("ECMs") at  
18 the Carl T. Hayden Phoenix VA Medical Center (the "Center").

19 4. Respondent was employed as a mechanical engineer with Bridgers and  
20 Paxton, and was assigned to design ECMs for the Center's chilled water storage project  
21 (the "Project").

22 5. On or about May 4, 2016, Board staff received a complaint alleging that  
23 Respondent failed to apply appropriate technical knowledge and skill in designing the  
24 Project.

25 6. On December 1, 2016, the Board's Enforcement Advisory Committee  
26 ("EAC") convened to review the complaint against Respondent. As a result of the  
27 December, 2016, meeting, the EAC concluded that Respondent failed to apply the  
28 appropriate technical knowledge and skill in his design of the Project.



1 A.A.C. R4-30-301(6), in that Respondent failed to apply appropriate knowledge and skill  
2 in his design of the Project.

#### 3 **IV. ORDER**

4 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues  
5 the following Order:

6 1. **STAYED SUSPENSION AND PROBATION.** Respondent's registration  
7 as Mechanical Engineer No. 35209, shall be suspended for twelve (12) months from the  
8 effective date of this Consent Agreement; however, the suspension is stayed for as long  
9 as Respondent remains in compliance with this Order. During the stay of suspension,  
10 Respondent's registration as a Professional 35209 is placed on probation for twelve (12)  
11 months. If Respondent is non-compliant with any terms of this Order during the twelve  
12 (12) month stayed suspension and probation period, the stay of the suspension shall be  
13 lifted and Respondent's registration as a Professional Engineer shall be automatically  
14 suspended without a formal hearing, and remain suspended until Respondent is compliant  
15 with all terms of this Order. If Respondent completes all terms of this Order prior to the  
16 twelve (12) month stayed suspension and probation period, Respondent may seek an  
17 early termination of this Order by requesting a formal review by the Board. The Board  
18 may also consider Respondent's non-compliance with this Order as a separate violation  
19 of A.R.S. § 32-150.

20 2. **PEER REVIEW.** Respondent shall submit his next two (2) Mechanical  
21 Engineering projects for peer review. Within Thirty (30) days of the effective date of this  
22 Consent Agreement, Respondent shall furnish to the Board, the name of an Arizona  
23 registered Professional Mechanical Engineer ("Peer Reviewer") who agrees to review  
24 and report on Respondent's work. The proposed Peer Reviewer shall have at least five  
25 years of actual engagement as a Mechanical Engineer with expertise in Mechanical  
26 Engineering, shall be registered and in good standing with the Board, and shall not have  
27 received any disciplinary action from the Board within the last three years. Respondent  
28 shall submit to the Board a current resume detailing the qualifications of the proposed

1 Peer Reviewer, and an Affidavit and Agreement to Conduct Peer Review signed by the  
2 proposed Peer Reviewer. Upon approval by the Board of the Peer Reviewer, Respondent  
3 shall ensure that the Peer Reviewer provides a written report to the Board after each peer  
4 reviewed project describing any deficiencies in Respondent's practice, and certifying that  
5 the peer reviewed project provided to the client by the Respondent is in compliance with  
6 Board rules and statutes. Respondent shall not give final approval on any projects to a  
7 client, contractor, any regulatory or review body or any other person until the project has  
8 been reviewed and approved by the Peer Reviewer. Respondent shall retain the Peer  
9 Reviewer at his own expense.

10 3. PROFESSIONAL ETHICS CLASS. Within sixty (60) days from effective  
11 date of this Consent Agreement, Respondent shall provide verification to the Board that  
12 Respondent has successfully completed a Board approved class in professional ethics.

13 4. COST OF INVESTIGATION. Within twelve (12) months from the  
14 effective date of this Consent Agreement, Respondent shall pay the cost of investigation  
15 of this case to the Board in the amount of Two Thousand Five Hundred Dollars  
16 (\$2500.00). Payments of Two Hundred Fifty Dollars (\$250.00) for ten (10) months are  
17 to be submitted to the Board by certified check or money order made payable to the State  
18 of Arizona Board of Technical Registration, according to the provisions of A.R.S. § 32-  
19 128(H).

20 5. OBEY ALL LAWS. During the probationary period, Respondent shall  
21 obey all federal, state and local laws, as well as, all rules governing the practice of  
22 Engineering in the State of Arizona. The Board shall consider any violation of this  
23 paragraph to be a separate violation of the rules and statutes governing the Arizona Board  
24 of Technical Registration. The Board may also consider Respondent's non-compliance  
25 with this Order as a separate violation of A.R.S. § 32-150.3.


26 6. RENEWAL OF REGISTRATION. During the probationary period,  
27 Respondent shall timely renew his Arizona registration as an Engineer and timely pay all  
28 required registration fees.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7. EFFECTIVE DATE. The effective date of this Consent Agreement is the date it was last executed by the Respondent or the Board.

8. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with complying with this Consent Agreement.

ACCEPTED and ORDERED this 23 day of June, 2020.

  
Jason E. Foose, RLS, Chairman  
Arizona State Board of Technical Registration

Consent Agreement and Order, Numbers P16-066 accepted this 17<sup>th</sup> day of June, 2020.

  
Steven O'Brien, Respondent



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORIGINAL** filed this 23 day of June, 2020, with:

Arizona State Board of Technical Registration  
1110 W. Washington, Suite 240  
Phoenix, AZ 85007

**COPY** of the foregoing mailed/~~e-mailed~~ this 23 day of June, 2020, to:

John L. Condrey  
Gordon Rees Scully Mansukhani  
One Renaissance Square  
Two North Central Avenue, Suite 2200  
Phoenix, AZ 85004

jcondrey@grsm.com  
*Counsel for Respondent*

Deanie Reh  
deanie.reh@azag.gov  
*Counsel for the State*

By:  \_\_\_\_\_