

BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION

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In the Matter of:
Joseph M. McCabe
Professional Engineer (Mechanical)
Registration No. 40668
Energy Inspectors
Firm No. 19293
Respondent

Case No.: P17-060

CONSENT AGREEMENT
and
ORDER OF DISCIPLINE

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration ("Board") and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, Joseph M. McCabe, ("Respondent"), holder of P.E. (Mechanical) Registration No. 40668, and Energy Inspector, ("Respondent Firm"), holder of Firm Registration No.19293, 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.

RECITALS

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

1 irrevocable.

2 4. Respondent understands that this Consent Agreement or any part of the
3 agreement may be considered in any future disciplinary action by the Board against him.

4 5. The Consent Agreement, any record prepared in this matter, all investigative
5 materials prepared or received by the Board and all related exhibits and materials, are
6 public records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this
7 Consent Agreement and may be retained in the Board's files pertaining to this matter.

8 6. Respondent understands this Consent Agreement deals with Board case
9 number P17-060 involving allegations that Respondent engaged in conduct that would
10 subject him to discipline under the Board's statutes and rules. The investigation into
11 these allegations against Respondent shall be concluded upon the Board's adoption of
12 this Consent Agreement.

13 7. Respondent understands that this Consent Agreement does not constitute a
14 dismissal or resolution of any other matters currently pending before the Board, if any,
15 and does not constitute any waiver, express or implied, of the Board's statutory authority
16 or jurisdiction regarding any other pending or future investigation, action or proceeding.

17 8. Respondent also understands that acceptance of this Consent Agreement does
18 not preclude any other agency, subdivision, or officer of this State from instituting any
19 other civil or criminal proceedings with respect to the conduct that is the subject of this
20 Consent Agreement.

21 9. Respondent acknowledges and agrees that, upon signing this Consent
22 Agreement and returning this document to the Board's Executive Director, he may not
23 revoke his acceptance of the Consent Agreement or make any modifications to the
24 document regardless of whether the Consent Agreement has been signed on behalf of the
25 Board. Any modification to this original document is ineffective and void unless
26 mutually agreed by the parties in writing.

27 10. This Consent Agreement is subject to the approval of the Board and is
28 effective only when accepted by the Board and signed on behalf of the Board. If the

1 Board does not accept this Consent Agreement, the Board retains its authority to hold a
2 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the
3 Board does not approve this Consent Agreement, it is withdrawn and shall be of no
4 evidentiary value and shall not be relied upon nor introduced in any action by any party,
5 except that the parties agree that should the Board reject this Consent Agreement and this
6 case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced
7 by its review and discussion of this document or any records relating thereto.

8 11. If a court of competent jurisdiction rules that any part of this Consent
9 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
10 shall remain in full force and effect.

11 12. Respondent understands that any violation of this Consent Agreement may
12 result in disciplinary action, including suspension or revocation of the registration under
13 A.R.S. § 32-150.

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

16 **FINDINGS OF FACT**

17 1. The Board is the duly constituted authority for the regulation and control of
18 the practice of Professional Engineering in the State of Arizona.

19 2. Respondent is the holder of Arizona Professional Engineer (Mechanical),
20 Registration No. 40668.

21 3. Board records indicate that Respondent Firm's Registration No. 19293,
22 expired on July 8, 2016, and was not renewed until January 19, 2017.

23 4. On December 18, 2016, Board staff received a complaint alleging
24 Respondent and Respondent Firm engaged in practice of a Board-Regulated profession
25 by sealing Tenant Improvement Plans for 1008 E. Buckeye Road, Suite 115, on August
26 18, 2016, while Respondent Firm's registration was expired.

27 5. On January 18, 2017, Respondent acknowledged that he was unaware that
28 Respondent Firm's Registration No. 19293, was expired at the time of the Tenant

1 Improvement Plans for 1008 E. Buckeye Road, Suite 115, Phoenix, Arizona.

2 CONCLUSIONS OF LAW

3 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.

4 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
5 pursuant to A.R.S. 32-128(C)(4), as it relates to A.A.C. R4-30-301(4), in that Respondent
6 failed to comply with Board statutes that pertain to Respondent's area of practice.

7 3. The conduct alleged in the Findings of Fact constitutes grounds for discipline
8 pursuant of A.R.S. 32- 141 and A.R.S. 32-121, in that Respondents engaged in the
9 practice of a Board regulated profession without firm registration.

10 ORDER

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

13 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of
14 Reprimand.

15 2. ADMINISTRATIVE PENALTY. Within sixty (60) days from the
16 effective date of this Consent Agreement, Respondents shall pay an administrative
17 penalty of Three Hundred Dollars (\$300.00) by certified check or money order made
18 payable to the State of Arizona Board of Technical Registration.

19 3. COST OF INVESTIGATION. Within thirty (30) days from the effective
20 date of this Consent Agreement, Respondents shall pay the cost of investigation of this
21 case to the Board in the amount of One Hundred Eighty-Two Dollars (\$182.00) by
22 certified check or money order made payable to the State of Arizona Board of Technical
23 Registration, according to the provisions of A.R.S. § 32-128(H).

24 4. OBEY ALL LAWS. Respondents shall obey all federal, state and local
25 laws, as well as, all rules governing the practice of Professional Engineer, in the State of
26 Arizona. The Board shall consider any violation of this paragraph to be a separate
27 violation of the rules and statues governing the Arizona Board of Technical Registration.

28 5. RENEWAL OF REGISTRATION. Respondents shall timely renew their

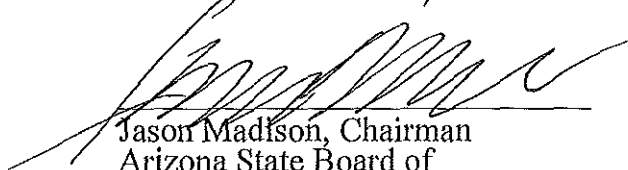
1 Arizona registrations as a Professional Engineer (Mechanical) and professional
2 engineering firm, and timely pay all required registration fees.

3 6. EFFECTIVE DATE. The effective date of this Consent Agreement is the
4 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
5 effective date is the later of the two dates.

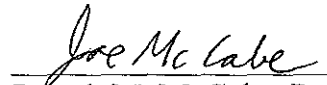
6 7. COSTS OF COMPLIANCE. Respondents shall pay all costs associated
7 with complying with this Consent Agreement.

8 8. NONCOMPLIANCE. If Respondent violates this Order in any way or fails
9 to fulfill the requirements of this Order, the Board, after giving notice and the opportunity
10 to be heard, may revoke, suspend or take other disciplinary actions against the
11 registration. The issue at such a hearing will be limited solely to whether this Order has
12 been violated.

13 ACCEPTED and ORDERED this 28th day of FEBRUARY, 2017.

14
15 
16 Jason Madison, Chairman
17 Arizona State Board of
18 Technical Registration

19 Consent Agreement and Order, No. P17-060 accepted this 21 day of
20 February, 2017.

21 
22 Joseph M. McCabe, Personally and on
23 behalf of Energy Inspectors,
24 Respondents

25 ORIGINAL filed this 2 day of
26 MARCH, 2017, with:
27 Arizona State Board of Technical Registration
28 1110 W. Washington, Suite 240
Phoenix, AZ 85007

COPY of the foregoing mailed via Certified Mail
No. 9214 8901, 9434, 4600 0103, 46 and
First Class mail this 2 day of MARCH, 2017, to:

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Joseph M. McCabe
Energy Inspectors
950 Boardwalk #301
San Marcus, CA 92078

By:  _____