BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:
Carlos A. Padilla
Land Surveyor
Registration No. 46474

OAH Docket No. 16F-M13-002-BTR
Case No.(s): A13-015
M13-002
M13-033
P14-082
P15-045
P15-090

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter came before Diane Mihalsky, Administrative Law Judge (ALJ) for the Office of Administrative Hearings on December 15, 2016; December 16, 2016; December 19, 2016; February 1, 2017; February 2, 2017; February 3, 2017; March 27, 2017, and March 28, 2017, for the purpose of determining whether good cause exists for the Arizona Board of Technical Registration ("Board") to Carlos Padilla's ("Respondent") Professional Land Surveyor Registration. The Respondent appeared in person at the hearing and was represented by Stephen J. Gonzalez, Esq., and the Board appeared through its attorney, Michael Raine, Esq., Assistant Attorney General.

At its regularly scheduled monthly meeting held June 27, 2017, the Board considered whether to adopt, modify or reject the Administrative Law Judge's Decision and Order, dated June 8, 2017. Seth Hargraves, Assistant Attorney General, was present to provide the Board with independent legal advice. Neither Respondent nor his attorney were present at the meeting. Mr. Raine, the Board's attorney, was present and requested that the Board adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommended Order. Mr. Raine also asked the Board to consider modifying the Recommended Decision to correct the following nonsubstantive errors:

- Finding of Fact # 18, strike "Board's Surveying Council" and replace with "Arizona Geographic Information Council";
- Finding of Fact #23, insert “sent” after “Miller” on line 21;
- Finding of Fact #64, strike “need” and replace with “needed” on line 9;
- Finding of Fact #134, strike “RLS” before “Vern” and replace with “public member” on line 8;
- Conclusion of Law #8, strike “RLS” before “Lewis” and replace with “public member” on line 9;
- Conclusion of Law #26, strike “RLS” before “Lewis” and replace with “public member” on line 6.

Further, Mr. Raine directed the Board’s attention to Conclusion of Law #29, wherein, beginning on line 29, the ALJ explained her reasoning for not recommending restitution.

After hearing the state’s argument and discussing the recommended decision, the Board voted to grant Mr. Raine’s requested modifications to ALJ’s Findings of Fact and Conclusions of Law; and to further modify Conclusion of Law #29, by striking the last sentence of the paragraph beginning on line 23 with the word “Because”. The Board also voted to adopt the ALJ’s Findings of Fact and Conclusions of Law, as modified. Further, finding that a restitution requirement is consistent with the Board’s duty to protect the public, the Board voted to modify the ALJ’s Recommended Order, by including a client restitution requirement, and adopt the ALJ’s Recommended Order as modified.

Based on the ALJ’s Recommended Decision, the administrative record in this matter and modifications adopted by the Board, the Board issues the following Order:

**FINDINGS OF FACT**

1. The Board adopts Findings of Fact, paragraphs 1 through 136, of the Administrative Law Judge’s Recommended Decision, as modified, attached hereto and incorporated herein by this reference.

**CONCLUSIONS OF LAW**

2. The Board adopts Conclusions of Law, paragraphs 1 through 29, of the Administrative Law Judge’s Recommended Decision, as modified, attached hereto and incorporated herein by this reference.
ORDER

Based on the Board's adoption of the Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. **REVOCATION OF REGISTRATION.** As of the effective date of this Order, Respondent's Arizona Registered Land Surveyor Registration No. 46474 shall be revoked.

2. **COST OF INVESTIGATION** – Within 30 days of the effective date of this Order, Respondent shall pay the costs of investigation in the amount of seventeen-thousand six-hundred forty-eight dollars ($17,648) by certified check or money order made payable to the State of Arizona Board of Technical Registration.

3. **COST OF ATTORNEY’S FEES AND HEARING.** - Within 30 days of the effective date of this Order, Respondent shall pay attorney's fees in the amount of twelve-thousand four-hundred fifty dollars and twenty-two cents ($12,450.22) by certified check or money order made payable to the State of Arizona Board of Technical Registration.

   It is further ordered that, upon receipt of a mailed invoice from the Board, pursuant to A.R.S. § 32-128(H), Respondent, shall reimburse the Board the costs and expenses it incurred in conducting the investigation and administrative hearing in this matter.

4. **RESTITUTION.** Within 30 days of the effective date of this Order, Respondent shall pay restitution to the individuals identified, in the amounts identified, under paragraph 29 of the Conclusions of Law.

**Right to Petition for Rehearing or Review**

Respondent is hereby notified that he has the right to file a motion for rehearing or review. Pursuant to A.R.S. § 41-1092.09(B) and A.A.C. R4-30-126(A) the motion for rehearing or review must be filed with the Board's Executive Director within 30 days after service of this Order. Service of this Order is defined as five calendar days after mailing.

The motion for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-30-126(C). If a petition for rehearing or review is not filed, the Board’s Order becomes effective 35 days after it is mailed to Respondent. Respondent is further
advised that the filing of a motion for rehearing or review is required to preserve any rights of appeal to Superior Court.

DATED this 29th day of June, 2017.

Arizona State Board of Technical Registration
Jason Madison Chairman

ORIGINAL filed this 30th day of June, 2017, with:

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

COPY mailed via Certified Mail No. 9214 87019434 4600 a17 10 and First Class mail this 30th day of June, 2017, to:

Carlos Padilla
1830 E. Broadway #124
Tucson, AZ 85719

COPY mailed via Certified Mail No. 9214 87019434 4600 a19 7 0.3 and First Class mail this 30th day of June, 2017, to:

Stephen J. Gonzalez
268 East River Road
Suite 250
Tucson, AZ 85704

6/29/17
COPY of the foregoing mailed this 30 day of January, 2017, to:

MICHAEL RAINE
Assistant Attorney General
State Bar No. 027509
1275 W. Washington CIV/SGD
Phoenix, Arizona 85007-2997

COPY of the foregoing mailed this 30 day of January, 2017, to:

Seth Hargraves
Assistant Attorney General
Office of the Attorney General
1275 W. Washington, CIV/LES
Phoenix, AZ 85007

COPY of the foregoing hand delivered this 30 day of January, 2017, to:

Diane Mihalsky
Office of Administrative Hearing
1400 W. Washington St.
Phoenix AZ, 85007

By: [Signature]

6/29/17
BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: Carlos A. Padilla
Land Surveyor
Registration No. 46474

Docket No. 16F-M13-002-BTR
Case No.(s): A13-015
A13-018
P14-082
M13-002
M13-033
P15-045
P15-090

Respondent

STATE'S MOTION TO MODIFY
ADMINISTRATIVE LAW JUDGE’S
RECOMMENDED DECISION

The State, on behalf of the Arizona Board of Technical Registration, hereby moves that the Board modify the Administrative Law Judge’s Recommended Decision in this matter to correct various nonsubstantive errors. This motion is in addition to any modifications that the State may request that the Board consider during its meeting June 27, 2017.

The State requests the following modifications:

(1) At page 4, line 23, strike “Board’s Surveying Council” and replace with “Arizona Geographic Information Council”

“Governor Jan Brewer appointed Mr. Foose to the Board’s Surveying Council
ARIZONA GEOGRAPHIC INFORMATION COUNCIL.”
(2) At page 5, line 21, insert "sent" after "Miller"

"Ms. Miller SENT to the Board a copy of the survey agreement"

(3) At page 15, line 9, strike "need" and replace with "needed"

"Mr. Muth also opined that Mr. Padilla had violated ABSMS #2 by failing to show that he had obtained and examined the record documents needed to execute the survey"

(4) At page 31, line 8, strike "RLS" before "Vern" and replace with "public member"

"On May 19, 2016, and EAC comprised of chairman RLS Daniel Muth and members RLS James E. Muth, RLS Ron Barbala, and RLS PUBLIC MEMBER Vern Lewis"

(5) At page 35, line 9, strike "RLS" before "Vern" and replace with "public member"

"RLS Foose, RLS Daniel Muth, RLS Dickey, RLS Haught, RLS McDonald, RLS Rakstad, RLS James Muth, RLS Barbala, and RLS PUBLIC MEMBER Lewis confirmed the requirement"

(6) At page 40, line 6, strike "RLS" before "Vern" and replace with "public member"

"The Board established that RLS Dickey, RLS Daniel E. Muth, RLS James E. Muth, RLS Barbala, and RLS PUBLIC MEMBER Lewis found that when"

Respectfully submitted this 27th day of June, 2017

Mark Brnovich
Attorney General

By: /s/Michael Raine
Assistant Attorney General
Attorney for the Department

ORIGINAL submitted in person this 27th day of June 2017, with:

Arizona State Board of Technical Registration
COPY Hand-Delivered this 27th day of June, 2017, to:

Stephen Gonzalez  
*Counsel for Respondent*

By: Michael Raine  
#6039334
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:
Carlos Padilla,
Holder of Professional Land Surveyor Registration No. 46474
Respondent.

No. 16F-M13-002-BTR
Case Nos. A13-015
   A13-018
   P14-082
   M13-002
   M13-033
   P15-045
   P15-090

ADMINISTRATIVE LAW JUDGE DECISION

HEARING DATES: December 15, 2016; December 16, 2016; December 19, 2016; February 1, 2017; February 2, 2017; February 3, 2017; March 27, 2017, and March 28, 2017; the record was held open until May 15, 2017, to allow the parties to submit post-hearing written closing arguments/legal memoranda.

APPEARANCES: The Arizona Board of Technical Registration ("the Board") was represented by Michael Raine, Esq., Assistant Attorney General; Carlos Padilla was represented by Stephen J. Gonzalez, Esq., Attorney at Law.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

PROCEDURE

1. The Arizona State Board of Technical Registration ("the Board") is the duly constituted authority for licensing and regulating the practice of professional land surveying in the State of Arizona.

2. Mr. Padilla is the holder of Professional Land Surveyor Registration No. 46474, which allows him to perform land surveys in the State of Arizona.

3. Between May 10, 2013, and June 11, 2015, the Board received seven complaints from consumers, other surveyors, or members of the public against Mr. Padilla. The Board investigated the complaints.
4. On September 1, 2016, the Board referred the seven consolidated complaints to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing. On September 16, 2016, the Board issued a Complaint and Notice of Hearing that set forth certain factual allegations about the seven complaints and, based on those allegations, charged cause under A.R.S. § 32-12B(C)(4), namely A.A.C. R4-30-301(2), (4), (6), and (13) and A.A.C. R4-30-304(D)(2) to discipline Mr. Padilla's RLS registration.

5. On October 19, 2016, Mr. Padilla filed a written answer to the Board's Complaint and Notice of Hearing, denying that he had committed any acts that provided cause for the Board to discipline his RLS registration.

6. Between December 15, 2016, and March 28, 2017, a hearing was held at OAH. The Board submitted 69 exhibits and presented the testimony of ten witnesses: (1) Joseph Rappazzo, who filed the complaint in Case No. A13-015; (2) Bonnie Mason, who filed the complaint in Case No. P15-045; (3) Constantin Solomon, who filed the complaint in Case No. P15-090; (4) Allen Sadherry, another RLS who was retained to finish the scope of work in Case Nos. A13-015 and P14-082; (5) Thom Pattaruti, who filed the complaint in Case No. P14-082; (6) David Barnes, the president of Carol Rae Ranch Homeowners' Association, which was also involved in Case No. P14-082; (7) Alexis Cruz, who filed the complaint in Case No. A13-018; (8) Carmen Miller, who filed the complaint in Case No. M13-003; (9) RLS Jason Foose, who testified as the Board's surveyor expert witness; and (10) Shawn Thacker, the Board's party representative and investigator assigned to the cases for the hearing. Mr. Padilla submitted 54 exhibits and testified on his own behalf.

HEARING EVIDENCE

Background

7. Mr. Padilla started his career as a surveyor working for Polaris Land Surveying as a rear chairman, instrument man, and, finally, party chief of a survey crew. Mr. Padilla started his own company when he became an RLS and has worked on his own for approximately ten years.

8. Mr. Padilla uses the Internet to market his professional surveyor services. He testified that he started using Google in 2008, and that he pays between $2,000.00 and
$3,000.00 per month for keywords that will ensure that one of his tradenames or companies, including AAA Survey Arizona, comes up as the first selection on a potential customer's internet search.

9. Mr. Padilla has an office and telephone number in Phoenix and Tucson. Mr. Padilla testified that he performs between 200 and 300 surveys per month and that he has completed between 2,000 and 2,300 surveys in the ten years that he has been an RLS. Mr. Padilla testified that, in contrast, Mr. Sadberry performed only 100 or 150 surveys per year.

10. Mr. Padilla testified that he has a couple part-time or full-time employees presently, but in the past employed up to eight persons in his surveying businesses. Mr. Padilla testified that he employed Chuck Stroup, an RLS, beginning in 2012, and that Mr. Stroup was Mr. Padilla's right-hand man. However, Mr. Stroup passed away three or four months before the hearing.

11. At the time of the hearing, Mr. Padilla was 68 years old. Mr. Padilla testified that since 2012, he has experienced several serious health issues, including congestive heart failure and diabetes. Mr. Padilla has been hospitalized four times since 2012, most recently, six months before the hearing. Mr. Padilla went blind for three months as a result of his diabetes and has experienced diabetic neuropathy. Mr. Padilla testified that sometimes the diabetes affects his memory. Mr. Padilla testified that, little by little, he is getting his health conditions under control through treatment by an endocrinologist and medication monitoring.

12. Mr. Padilla testified that he is single and has seven adult children. After his brother was diagnosed with brain cancer in 2012 and not expected to live very long, Mr. Padilla regularly visited his brother until he died in 2013. Mr. Padilla’s mother was diagnosed with cancer, strokes, and broken hips before she passed away in 2014.

13. Mr. Sadberry is an RLS in Arizona. In 2009 or 2010, Mr. Sadberry registered the trade name, Survey Arizona LLC, with the Arizona Secretary of State. Mr. Sadberry testified that he has had conversations with a number of people who were confused by the similarity between his trade name, Survey Arizona LLC, and Mr. Padilla’s company name, AAA Survey Arizona. Mr. Sadberry testified that he was not aware of turf battles in
the surveyor profession, although if a surveyor is experienced in a particular type of survey or geographical area, he may have a competitive advantage.

14. On or about January 29, 2010, Attorney Alan T. Spragins, Esq. set a letter to Mr. Padilla, stating that Mr. Spragins represented Survey Arizona LLC and that if Mr. Padilla continued using the name, "Survey Arizona," Mr. Spragins was authorized to take legal action." Mr. Sadberry testified that Mr. Spragins was a personal friend and that he had paid approximately $100 for the letter, but had not authorized Mr. Spragins to perform any research.

15. On or about September 10, 2014, Mr. Padilla's attorney sent a response to Mr. Spragins' January 29, 2010 letter, stating that Mr. Padilla began using the name AAA Survey Arizona in 2007, long before Mr. Sadberry registered the name Survey Arizona LLC with the Arizona Secretary of State. Mr. Padilla's attorney stated that Mr. Padilla's right to use the name, "Survey Arizona," was protected by the common law of Arizona and demanded that Mr. Sadberry stop using the name, "Survey Arizona," or Mr. Padilla's attorney would institute legal action. 

16. No direct evidence was submitted that either Mr. Sadberry or Mr. Padilla ever took any legal action against the other's use of the name, Survey Arizona, or that either one stopped using the name in their businesses.

17. Mr. Foose is an RLS who is currently employed by Mohave County, primarily to provide survey services when the County acquires rights-of-way to property and to monitor other surveyors' work when a property owner has started work on a minor land split for a small subdivision. Mr. Foose was licensed as an RLS in Colorado in 2000, in Arizona in 2005, and in New Mexico in 2010.

18. Governor Jan Brewer appointed Mr. Foose to the Board's Surveying Council. After Mr. Foose submitted his name for membership on the Board, Governor Doug Ducey appointed Mr. Foose to the Board.

19. The Board is comprised of members of regulated professions and occupations, including architects, engineers, geologists, land surveyors, landscape architects, alarms, and home inspectors. When the Board receives a complaint against a

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1 See Mr. Padilla's Exhibit E.
2 See Mr. Padilla's Exhibit F.
licensee, it sends the complaint out to a member of the regulated profession or occupation for an opinion. If the reviewing member opines that the complaint may have merit, the Board convenes an Enforcement Advisory Committee ("EAC") comprised of three to five volunteer members of the regulated profession or occupation to further review the complaint.

20. After the Board received the first five complaints, it asked Mr. Foose to review the complaints and he prepared a report of his opinions about possible violations of the Arizona Boundary Survey Minimum Standards ("ABSMS"), regulations, or statutes. Mr. Foose has not sat on any of the Board's EACs that reviewed the complaints and has recused himself from the Board's consideration of any of the complaints that have filed against Mr. Padilla.

21. An EAC of three to five RLS holders reviewed the complaints against Mr. Padilla. RLS David Shane was the chairperson of some of the reviewing EACs. Mr. Shane also performed the preliminary review of Case No. M13-0033. Mr. Shane has since retired from the surveying profession and did not testify.

Case No. M13-002 (Miller)\(^3\)

22. On July 18, 2012, Carmen Miller filed a complaint with the Board alleging that she had contracted with Mr. Padilla for a land survey and that, after she paid $1,200.00, he had neither performed any work nor contacted her. Ms. Miller asked for the Board's assistance in obtaining a refund of the money she had paid Mr. Padilla because she no longer trusted him to complete the project.\(^4\)

23. Ms. Miller filed a copy of the survey agreement that Mr. Padilla had prepared for her on or about September 16, 2011, agreeing to perform a boundary survey, including a drawing, of a parcel that Martin Valle owned and to prepare a result of survey drawing that he would record with the Cochise County Recorder for $2,400.00, with a 50% down payment of $1,200.00.\(^5\)

\(^3\) The complaints are discussed in the order that the Board received them. Most references to the audio record are omitted but were contained in the parties' written closing arguments and responses to their opponents' written closing arguments.

\(^4\) See the Board's Exhibit 25.

\(^5\) The Board's Exhibit 27.
24. Before she signed the survey agreement, Ms. Miller wrote on it, “Before recording coordinate with Carman.” The survey agreement showed Ms. Miller’s P.O. Box number in Benson, Arizona and her telephone number. On September 26, 2011, Ms. Miller paid Mr. Padilla $1,200.00 by check. Her P.O. Box is also shown on the check. Mr. Padilla cashed the check.

25. Ms. Miller explained in her complaint that she contacted Mr. Padilla via email on March 6, 2012, and requested a refund of her deposit, and that he responded to the email by stating that he had lost her contact information. Ms. Miller stated Mr. Padilla’s email claimed that the work had been ready for three months, but that he had never produced evidence that he had performed any work. Ms. Miller stated that, thereafter, Mr. Padilla failed to respond to her emails or phone messages.

26. Ms. Miller was referred to Mr. Padilla by Dale Wisehart, who worked for Cochise County as a surveyor but was not licensed. Ms. Miller and Mr. Padilla never met in person. Ms. Miller testified that Mr. Wisehart acted as a go-between with Mr. Padilla and that all of her communications with Mr. Padilla were through email.

27. Ms. Miller testified that in early 2012, she changed the P.O. Box to her physical street address, but that mail sent to the P.O. Box was forwarded to her physical address for a year and a half. Ms. Miller testified that she still had the same telephone number that was on the survey agreement and that she continued to use the same email address that Mr. Padilla had previously used to communicate with her. Ms. Miller testified that Mr. Wisehart’s number did not change and that she had not experienced any problems with anyone other than Mr. Padilla being unable to contact her.

28. Mr. Padilla’s November 20, 2012 response to the Board’s notice of Ms. Miller’s complaint stated that he “had a very difficult time locating [Ms. Miller’s] Survey agreement” because it “had been filed in a random folder in a computer we were not using any more” and that he had only accidentally found the agreement three days before filing the response. Mr. Padilla attached to his response a survey drawing marked “preliminary” that he allegedly prepared pursuant to his agreement with Ms. Miller.6

6 See the Board’s Exhibit 29.
29. Mr. Padilla testified that after he paid Mr. Wisehart $600.00 of Ms. Miller's $1,200.00 deposit for the referral, he had a falling out with Mr. Wisehart. Mr. Padilla testified that because Mr. Wisehart had the file, he did not have access to Ms. Miller's contact information. He admitted that he did not attempt to check his emails, phone records, or bank records to find Ms. Miller.

30. On June 17, 2014, the Board received a supplemental response from Mr. Padilla to Ms. Miller's complaint, stating that the reasons that he had not recorded the results of the survey were that Ms. Miller had instructed him not to record anything without consulting her and she had not paid him in full for the survey. Because Ms. Miller had not paid the second half of the contract price, Mr. Padilla stated that he would remove all monuments that he had set for the job. Mr. Padilla indicated that he would reset the monuments and record the drawing if Ms. Miller paid him in full.7

31. Mr. Padilla attached to his June 17, 2014 supplemental response Exhibit A, a proposed right-of-way description for APN 120-20-003a, and a drawing of the surveyed plot on N. Lee Street.8

32. Ms. Miller testified that she never received a drawing from Mr. Padilla.

33. Ms. Miller testified that she was unaware that Mr. Padilla had placed monuments on her property or that he had removed the monuments. She testified that she would not have wanted him on her property after he failed to contact her and she filed the complaint with the Board.

34. On or about September 18, 2013, Daniel R. Muth, RLS, performed a preliminary assessment of Ms. Miller's complaint. Mr. Muth was concerned that Mr. Padilla failed to record the results of survey or to contact Ms. Miller, despite the presence of Ms. Miller's contact information on the survey agreement. Mr. Muth stated that Mr. Padilla's failures "call into question regarding professional conduct and judgement."9

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7 See the Board's Exhibit 33.
8 See id.
9 The Board's Exhibit 30.
35. On or about October 26, 2013, RLS David Shane reviewed Ms. Miller's complaint and Mr. Padilla's responses at the Board's request. Mr. Shane concluded as follows:

   This situation should be resolved by a civil action for completion of the contract or recovery of moneys. However there should be concerns about the professional conduct that created these circumstances. The registrant's conduct is not appropriate.10

36. On July 24, 2014, an EAC composed of three other registered surveyors and chaired by RLS Shane reached essentially the same conclusions. The audio record of the EAC meeting indicated some disagreement about when a registrant is required to record the results of survey but that the other members of the EAC eventually accepted Mr. Shane's opinion that without a final plat, a technical deficiency could not be assessed and that a registrant was not required to record a preliminary results of survey drawing.11

37. RLS Foose testified that the ABSMS do not provide for input from a property owner or consider whether the consumer has paid the contract price in setting standards for registered surveyors. Mr. Foose testified that, in his opinion, Mr. Padilla violated ABSMS #13(C) by failing to record the results of the survey he prepared for Ms. Miller.

38. Mr. Foose's report to the Board opined that Mr. Padilla had violated A.A.C. R4-30-301(2) by misrepresenting in the survey agreement that he would consult Ms. Miller before recording the results of survey because A.R.S. § 33-105 did not condition the surveyor's duty to record the results of survey on the client's participation or payment. Mr. Foose's report also opined that Mr. Padilla violated A.A.C. R4-30-301(6) by failing to keep in contact with her for nearly six months, even though he should have had access to her contact information and knew her physical address.12

Case No. M13-033 (Anonymous/Land Split)

39. On or about November 8, 2012, the Board received an anonymous complaint that Mr. Padilla had set some survey monuments within Section 33, Township 2 North, Range 3 East and had failed to record a results of survey.13

10 The Board's Exhibit 31.
11 The Board's Exhibit 59, minutes 28:10 to 32:00 and 35:10 to 37:40.
12 See the Board's Exhibit 10 at P46.
13 See the Board's Exhibit 35.
40. The Board sent the anonymous complaint to Mr. Padilla for his response. On or about January 25, 2013, Mr. Padilla sent a letter explaining the circumstances of his setting of the monuments. In February 2010, he had been hired by Charles Leahy to do a boundary survey to split a parcel so that Mr. Leahy could sell a portion of the parcel to Lucio Lozoya. After Mr. Padilla performed the survey, he provided Mr. Leahy with a results of survey and Mr. Leahy’s realtor said that he would record the results of survey. Mr. Padilla stated that he was confident the realtor would record the results of survey because, otherwise, Mr. Leahy would not be able to execute the split.

41. Mr. Padilla explained further that a few weeks later, Mr. Lozoya approached Mr. Padilla about performing the work to combine his parcel with the parcel that he had purchased from Mr. Leahy. Mr. Padilla stated that he went to the City of Phoenix to investigate the matter and learned that Mr. Lozoya’s parcel had a special permit overlay that would need to be removed before the parcels could be combined, requiring Mr. Lozoya to pay a filing fee and submit a site plan. Mr. Padilla stated that although he continued to contact Mr. Lozoya over the next year and a half, Mr. Lozoya never had the money to pursue the project.14

42. Mr. Padilla testified that Mr. Leahy had paid him in full in February 2010.

43. On or about July 24, 2014, an EAC comprised of Mr. Shane and two other members determined that the complaint was unsubstantiated because ABSMS #13 sets the conditions for recording, but does not set a time frame, and A.R.S. § 33-105 requires a survey to be recorded within ninety days of completion. The EAC concluded that "[i]t is still subject to review and acceptance" and that "[i]t would show boundary lines that did not exist." The EAC also noted that the project had been completed by another survey company and that monuments shown on Mr. Padilla’s plat had been recorded by the other survey company.15

44. The EAC noted that A.R.S. § 33-105 "is a statute that has been discussed by a number of committees over the past 15 years particularly trying to define what is meant by the term 'completion.'" The EAC noted that "[t]here has not been a consensus

14 See the Board’s Exhibits 37, 39.
15 See the Board’s Exhibit 41.
on any particular event that triggers the start of the 90 day period," but that "\[\text{there is a consensus that any project subject to review is not complete.}\]"

45. On or about April 11, 2015, RLS Foose opined that Mr. Padilla had violated A.R.S. § 33-105 by failing to record the results of survey that he gave Mr. Leahy. Mr. Foose stated that the statute does not allow a surveyor to delegate to a client or another the duty to record. In addition, statute did not recognize any exception to the duty to record based on "the administrative process imposed by local regulatory agencies." 16

46. Mr. Foose opined that because ABSMS #13 did not provide any time for recording a results of survey, the time for Mr. Padilla to record the results of survey started running when he set the monuments. Mr. Foose testified that although Mr. Padilla could have delegated recording the results of the survey to the realtor, he remained personally responsible for making sure that the results of survey were recorded. 17

Case No. A13-015 (Rappazzo/Metro Parkway)

47. On or about May 10, 2013, Jim Brown filed a complaint with the Board about Mr. Padilla's work on a survey for a planned medical marijuana dispensary. 19 Mr. Brown's complaint alleged that although Mr. Padilla attributed his delay in completing the project to the title company's failure to provide documents, Mr. Brown had determined that Mr. Padilla had received the allegedly missing information from the title company on April 9, 12, and 15, 2013.

48. On or about May 29, 2013, the architect on the project, Jay R. Jolley, filed a complaint with the Board alleging that Mr. Padilla had failed to include in his survey certain items for the scope of work set forth in the survey agreement:

1. Show node at all spot grade locations.

2. Spot grades along entire lot perimeter, I suggest every 50 feet.

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16 Id.
17 The Board's Exhibit 10 at P49.
18 Mr. Padilla argued that the anonymous complaint must have been filed by Mr. Sadberry based on his alleged animus toward Mr. Padilla based on the alleged trade name infringement dispute. No evidence supports this theory. It seems equally likely that the surveyor or someone involved with the surveyor who eventually executed the parcel split and recorded the monuments that Mr. Padilla had set made the anonymous complaint.
19 See the Board's Exhibit 1.
3. Spot grades at all building corners.

4. Distances from building corners to property lines.

5. Top of curb & flow line elevations at all parking lot corners. Label curb & gutter or vertical curb.

6. Show location of existing sanitary and water main adjacent to the site.

7. Locate fire hydrants near the property and show on plan.

8. Location of existing cleanouts, water meter/valves, storm inlets, drywells on that property.

9. Show storm water drains or curb cut locations.

10. Spot grades in the playground area to determine high/low points.

11. Dimension/limits of playground area.

12. Label pavement type (Conc./asphalt/pavers), Concrete slabs, sidewalks.

13. Add benchmark description, elevation and datum.

14. Describe found or set property corners.

On or about May 29, 2013, Mr. Brown's business associate, Joseph Rappazzo, filed another complaint with the Board alleging that Mr. Padilla had failed to meet agreed upon deadlines, provided substandard work, and improperly charged his credit card. Both Mr. Brown and Mr. Rappazzo stated that Mr. Padilla led them to believe that he was associated with Mr. Sadberry.

On or about April 5, 2013, Mr. Padilla entered into a contract to provide survey services to Mr. Rappazzo and his associates at a cost of $2,700.00. The survey agreement included a drawing and the following scope of work:

1) Research required to complete an accurate survey.

See the Board's Exhibit 2.
2) ALTA/ACSM Boundary survey and topographic survey of said Parcel.

3) Provide spot elevations over entire site.

4) Provide curb elevations on adjacent roadways at 50 foot intervals.

5) Cross section existing retention areas.

6) Collect Finished Floor elevation and set TBM.

7) Collect above ground utilities.

8) Confirm found monuments on said Parcel.

9) Replace missing monuments with ½” 18” long re-bar.

10) Prepare ALTA drawing showing [sic].

51. Mr. Rappazzo testified pursuant to the Board’s subpoena. Mr. Rappazzo
tested that the reason he and Mr. Brown hired Mr. Padilla was that they were trying to
qualify for a use permit under the City of Phoenix’s code for a medical marijuana
dispensary. Mr. Rappazzo testified that the City’s required the exact location and
distances from the exact suite in which a dispensary was proposed to other dispensaries
and schools, churches, and playgrounds.

52. Mr. Rappazzo testified that he had been referred to Mr. Sadberry’s company
Survey Arizona, LLC by other medical marijuana dispensary certificate holders because
he had done this kind of work. Mr. Rappazzo testified that he Googled Survey Arizona
and found Mr. Padilla.

53. Mr. Rappazzo testified that he specifically asked for Mr. Sadberry and that
Mr. Padilla stated that he was familiar with the requirements for a medical marijuana
dispensary and that Mr. Sadberry worked for Mr. Padilla.

54. Mr. Rappazzo testified that to show distances between the proposed medical
marijuana dispensary and churches, schools, playgrounds, and other dispensaries, Mr.
Padilla printed out an aerial view of the area and marked it with a Sharpie pen with

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22 The Board’s Exhibit 8 at P30.
distances in round numbers between the proposed dispensary and two schools, with the
notation, "+/-." Mr. Rappazzo testified that the drawing was never submitted to the City of Phoenix because it did not meet the City's requirements.

55. Mr. Rappazzo testified that he discussed the shortcomings in Mr. Padilla's work with Mr. Brown, Mr. Jolly, zoning attorney Larry Lazarus, personnel at the City of Phoenix, and with Mr. Padilla. Mr. Rappazzo testified that Mr. Padilla was not helpful or responsive when the shortcomings in his work were pointed out to him.

56. On or about April 23, 2013, Mr. Padilla was fired from the marijuana dispensary project due to non-performance. Mr. Rappazzo testified that Mr. Padilla later made additional charges on his credit card without authorization. Mr. Rappazzo testified that he successfully filed a challenge to Mr. Padilla's charges with his credit card company because Mr. Padilla failed to provide the contracted for services. Mr. Rappazzo testified that he was not out any money due to Mr. Padilla's poor work.

57. Mr. Padilla testified that the additional charges to Mr. Rappazzo's credit card were an innocent mistake and that he was only trying to collect the deposit for the job.

58. Mr. Rappazzo testified that after he fired Mr. Padilla, he hired Mr. Sadberry to complete the project and that Mr. Sadberry charged $1,200.00 for this work. Mr. Rappazzo testified that Mr. Sadberry did not use any of the work that Mr. Padilla had performed, but that with Mr. Sadberry's work, he and his associates were able to obtain the use permit from the City of Phoenix for the medical marijuana dispensary.

59. Mr. Rappazzo denied that Mr. Sadberry recommended that Mr. Rappazzo file a complaint with the Board.

60. On or about June 6, 2013, Mr. Padilla filed an initial response to Mr. Rappazzo's complaint about the survey for the medical marijuana dispensary with the Board, in relevant part as follows:

[Mr. Rappazzo] requested an ALTA survey and needed a legal description of a suite located inside the building, which is located on said parcel. We immediately began the field work

See the Board's Exhibit 63. Mr. Padilla placed his seal on the drawing.

See the Board's Exhibit 64. Mr. Rappazzo's letter terminating Mr. Padilla's employment called out seven alleged deficiencies.

See the Board's Exhibit 65.

See February 3, 2017 audio record at 2:26:00 – 2:31:00.
operations, because he had a deadline to meet. He needed the legal description and a sketch of the parcel urgently, because of a pending application for a Marihuana dispensary. We delivered the legal description and sketch to Mr. Rappazzo on Monday 4-08-13 and he submitted them to the City of Phoenix in time for his application. We completed the ALTA drawing on 4-10-13 but for the schedule "B" items because we had not received the most current title report from the title company. Meanwhile his architect, his engineer, and his partner got involved in giving me instruction. It was a mess, so I requested from Mr. Rappazzo that he be the only one giving instruction. Things went downhill from there. As soon as we got the title report, we completed the drawing and delivered [it] to Mr. Rappazzo. We gave Mr. Rappazzo great service but still things were not going well. Although we had completed the job and he had submitted the documents we prepared for him to the city, he said he wanted to cancel. Honestly, I don't know what was going on.

When [he] hired us he gave me his American Express Credit Card number for the deposit with the mutual understanding that [we] were to charge the balance to that Credit Card once we completed.27

Mr. Padilla attached to his June 6, 2011 response a several printouts, including a legal description, purported ALTA/ACSM Land Title Survey, and a drawing of the suite where the dispensary would be located.

61. RLS Sadberry testified that an ALTA survey includes special requirements. The survey was required to show an accurate distance between the proposed dispensary and schools. Mr. Sadberry testified that he has never used the notation, "+/-", on an ALTA survey for a dispensary.28 Mr. Sadberry testified that Mr. Jolley's complaints nos. 4, 7, 8, and 12 concerned requirements of an ALTA survey.

62. Mr. Padilla claimed that his work was delayed by the failure of the title company to provide a title report. Mr. Padilla also acknowledged that he could have obtained the legal descriptions himself through the Maricopa County Recorder's online records using the references that he had received at the beginning of the engagement.

27 The Board's Exhibit 5 at P11.
28 See the Board's Exhibit 66 ill 2 (measurement precision standards on ALTA/ACSM surveys).
63. RLS Daniel R. Muth reviewed the complaints against Mr. Padilla about his work on the survey for the marijuana dispensary. Mr. Muth opined that Mr. Padilla had violated ALTA/ACSM standard 4 by failing to cite record deed information for the subject property and adjoining parcels and the ALTA/ACSM Table A Optional Survey Responsibilities, failing to set monuments, failing to cite the vertical datum used, failing to label where the vertical height of the building was taken, and failing to clearly identify the closest intersection. Mr. Muth noted that Mr. Padilla had certified that he complied with these ALTA/ACSM requirements.  

64. Mr. Muth also opined that Mr. Padilla had violated ABSMS #2 by failing to show that he had obtained and examined the record documents need to execute the survey, but that the tax assessor parcel identification numbers were not considered to be record documents because they are subject to change, ABSMS #12(A) because he failed to cite the vertical datum used on the survey, ABSMS #14(E)(2)(a) because he failed to cite a basis of bearing in the legal description he provided to the Board, and ABSMS #14(E)(2)(b) because he failed to describe the controlling monuments in the legal description.  

65. Mr. Padilla filed a response to Mr. Muth's criticisms, stating that "[t]he reason certain items were not completed on the drawing was that we were removed from the project by Mr. Rappazzo because according to him we had not met the deadline."  

66. Mr. Padilla testified that an ALTA/ACSM survey is very demanding and may take as many as 30-50 man-hours, as well as some time waiting for information from the title company. Mr. Padilla acknowledged that he received the title report and that he could have obtained the legal descriptions through the county recorder's online records using the references that he had initially received.  

67. Mr. Padilla testified that he prepared the aerial photograph showing the distances to the two schools at Mr. Rappazzo's request, not as an exhibit to submit with an application to the City for a use permit for a marijuana dispensary. Mr. Padilla denied ever telling Mr. Rappazzo that he was associated with Mr. Sadberry.

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27 See the Board's Exhibit 6 at P10.  
28 See id. at P10-P19.  
29 The Board's Exhibit 8 at P26.  
30 See February 3, 2017 audio recording at 2:02:00, 3:49:00.
66. Mr. Padilla acknowledged that he failed to cite vertical datum used on his survey in violation of ABSMS #12(A). Mr. Padilla explained that the failure was an inadvertent error caused by a rush job and his poor health.

69. An EAC comprised of three surveyors with RLS David Shane as the chairman reviewed the complaints. The EAC reviewed a document that Mr. Padilla had provided that was marked "preliminary." The EAC determined that the violations of ALTA/ACSM and of ABSMS were unsubstantiated because "no final sealed drawings were available to review," even though Mr. Padilla's failure to meet the schedule and the deficiencies in the preliminary drawings outlined by Mr. Jolly "indicate problems with his work . . . ."

70. At the hearing, Mr. Padilla submitted a signed and sealed drawing of the dispensary property dated April 14, 2013. Mr. Padilla's testimony regarding the significance of this drawing was inconsistent and contradictory.

71. Mr. Shane's report concluded:

[Mr. Padilla] has demonstrated a lack of understanding of the survey business. A number of times when asked about specific conditions his answers were "I did not know". In that answer he seems to suggest that because he did [not] know that it was okay perhaps an opportunity to learn. My position on this it indicates insufficient knowledge to be supplying services to the public.

72. RLS Foose's report to the Board opined that Mr. Padilla's work on the survey for the marijuana dispensary violated applicable regulation and ALTA/ACSM requirements. Specifically, Mr. Foose opined that Mr. Padilla violated the Board's Rule R4-30-301.2 in the following respects:

Misrepresenting his ability to adequately serve the client's demanding project schedule;

Misrepresenting his technical ability by providing dysfunctional results to another registrant; [and]
Misrepresenting his technical ability by overstepping and
discounting a registrant's recommendation/request for
information regarding that particular discipline's requirements
(site design).35

Mr. Foose also opined that Mr. Padilla violated the Board's Rule R4-30-301.6 "though his
inability to apply his technical skill and knowledge to complete tasks which ultimately were
fulfilled through the client's selection of a replacement surveyor practicing in the same
profession in the same area at the same time."40

73. Mr. Foose explained that Mr. Jolly was the other registrant to whom Mr.
Padilla had provided dysfunctional results. Mr. Jolly's complaint listed 14 items that, as
the project's architect, he needed Mr. Padilla to provide for Mr. Jolly to perform his scope
of work.

74. Mr. Foose also opined in his report that Mr. Padilla had violated ALTA/ACSM
Requirement #2 by failing to include in the scope of services agreement certain terms.
Mr. Foose concluded in relevant part as follows:

[Mr. Padilla] clearly accepted an engagement beyond his
capabilities. The client's expectations were not satisfied. A
direct disservice was witnessed by a fellow registrant whereas
that registrant was reliant upon [Mr. Padilla's] efforts. [Mr.
Padilla's] effort produced no more than a failed attempt to
provide professional services to the public.41

Case No. A13-018 (Cruz)

75. On or about May 16, 2013, Alexis Cruz filed a complaint against Mr. Padilla
with the Board, alleging that he had hired Mr. Padilla to survey the four corners of his
property so that he could build a fence around the property. Mr. Cruz alleged that Mr.
Padilla had identified a fence post with a piece of rebar with a round metal tag hanging by
a string and placed ribbons on the points that he had identified as the four corners of the
property, including the fence post. Mr. Cruz stated that on April 17, 2013, Mr. Padilla
confirmed to him that the fence post marked the corner of his property. Mr. Cruz stated

35 The Board's Exhibit 10 at P40.
40 Id.
41 Id.
that after he started constructing the fence, his neighbor informed him that he was constructing the fence on the neighbor's property. Mr. Cruz stated that he contacted Mr. Padilla and when he got off work, went to the property and noticed that someone had removed the ribbon from the fence post and that his father-in-law discovered a surveyor's stake 15 feet from the fence post. Mr. Cruz stated that after he contacted Mr. Padilla about the problem and the ribbon was removed from the fence post, Mr. Padilla failed to return his telephone calls.42

76. Mr. Cruz testified consistently with his written complaint, stating that Mr. Padilla was generally unprofessional, postponed meetings, failed to communicate, and terminated communication once Mr. Cruz raised concerns.

77. Mr. Cruz described his only meeting with Mr. Padilla on his property, when they walked the property identifying likely property corners. They came to a place on the property where a chain link fence terminated at a fence post. At the endpoint of the fence line, there was a surveyor's stake that someone had removed from the ground and hung from the fence with string. Mr. Cruz testified that Mr. Padilla tied a colored ribbon to the stake as he had done with the other possible property corners.

78. Mr. Cruz testified that Mr. Padilla said that it would take him a week to confirm his findings. After a week, when Mr. Padilla did not contact Mr. Cruz, on April 17, 2013, Mr. Cruz spoke to Mr. Padilla on the telephone. Mr. Cruz testified that that he noticed the angle of the property line and wished to confirm the location of the property corner. Mr. Cruz testified that on April 17, 2013, Mr. Padilla confirmed that the post at the end of the fence line was the correct location of the property corner. Mr. Cruz testified that when he asked Mr. Padilla about the hanging stake, Mr. Padilla stated that someone had likely pulled it out when the fence was installed.

79. Mr. Cruz testified that when his contractor started pouring footers for the block wall, two neighbors informed him that he was building a wall on one of the neighbor's property. Mr. Cruz testified that he again contacted Mr. Padilla, who again reassured him that the post at the end of the fence was the correct property corner and scheduled a meeting with Mr. Cruz at the property.

42 See the Board's Exhibit 12.
80. The correct property corner was actually 15 feet away, in the middle of the fence. On the day of the scheduled meeting, Mr. Cruz's father visited the property and noticed that someone had removed Mr. Padilla's ribbon and placed it at the correct location in the middle of the fence. Mr. Cruz's father found the monument that marked the correct property corner. Although Mr. Cruz again attempted to contact Mr. Padilla again, Mr. Padilla refused to communicate further except through email.

81. Mr. Cruz testified that he successfully challenged Mr. Padilla's charges to his account and that his bank reversed the charges.

82. Mr. Padilla denied that he had identified an incorrect property corner to Mr. Cruz. Mr. Padilla pointed out that Mr. Cruz did not submit any photographs of the stake hanging from the fence with Mr. Padilla's ribbon on it. Mr. Padilla attached to his written response photographs that he stated showed the survey monuments in the proper locations that he had identified to Mr. Cruz.43

83. On or about July 1, 2013, J. Leonard Fontes, Jr., RLS, reviewed Mr. Cruz’s complaint and Mr. Padilla’s response. Mr. Fontes opined that Mr. Padilla failed to meet standards of professional appraisal practice because there was no evidence that Mr. Padilla had obtained and reviewed record documents when he performed the survey or that he had taken measurements at the site.44

84. On or about June 26, 2013, Mr. Padilla provided additional documentation to the Board to support the survey he performed for Mr. Cruz, including documents from the County Recorder's and Assessor’s offices and his survey certification dated April 17, 2013, which stated that "I confirmed all existing monuments, and re-set any missing monuments on said parcel."45

85. On or about September 10, 2013, RLS Daniel Muth reviewed Mr. Cruz’s complaint and Mr. Padilla’s response. Mr. Muth opined that Mr. Padilla had departed from ABSMS #2 because there was no evidence that he had the required documentation to verify the boundary and there was no evidence that Mr. Padilla had actually made measurements to verify the found documentation.46

43 See the Board’s Exhibit 14 at P64 – P69.
44 See the Board’s Exhibit 15.
45 See the Board’s Exhibit 19 at P102.
46 See the Board’s Exhibit 16.
86. On July 24, 2013, and August 28, 2013, an EAC comprised of three registered surveyors, with RLS David Shane as the chair, considered Mr. Cruz’s complaint. Mr. Padilla attended the EAC meeting but Mr. Cruz did not. The EAC wondered whether the work crew had simply believed that the end of the fence was the property corner. The EAC declined to substantiate Mr. Cruz’s complaint because it could not resolve contradictions between Mr. Cruz’s and Mr. Padilla’s accounts.47

87. The EAC substantiated the allegation that Mr. Padilla had failed to provide evidence that he had properly conducted the survey.48 EAC members indicated that one reason that they could not tell if Mr. Padilla had correctly marked the corner of Mr. Cruz’s property was that he had not provided his field notes or created a drawing, which they would have expected.49 The EAC also noted that the coordinates that Mr. Padilla provided did not demonstrate that he actually surveyed the property or verified found monuments.50

88. Mr. Padilla submitted coordinates that he testified he used for his survey of Mr. Cruz’s property.51 Mr. Padilla argued that the EAC was not satisfied with his field data because it wanted him to use software that was not required by any regulation or standard.

89. Mr. Foose’s report substantiated that Mr. Padilla had failed to properly demonstrate his opinion on the location of the property corners. Mr. Foose opined that Mr. Cruz would have been better off if he had not hired Mr. Padilla to survey the property. Mr. Foose noted that because Mr. Padilla had issued a survey certificate that indicated that he re-set missing monuments,52 he should have recorded the reset monuments and that his failure to do so violated ABSMS #13(C).

Case No. P14-082 (Petteruti/Carol Rae Ranch)

90. On or about April 23, 2014, Thom Petteruti of TAP and Sons Electric filed a complaint against Mr. Padilla with the Board, alleging that Mr. Padilla had misrepresented

47 See the Board’s Exhibit 20, 57A at 12:30, 54:00.
48 See the Board’s Exhibit 20.
49 See the Board’s Exhibit 57A at 17:00, 32:00.
50 See id. at 42:00 – 49:00.
51 See Mr. Padilla’s Exhibit K.
52 See the Board’s Exhibit 19 at P102.
that he was associated with Survey Arizona and that he had the insurance that Salt River
Project ("SRP") required for its jobs. Mr. Petteruti requested that the Board require Mr.
Padilla to return the $1,600.00 that he had been paid because after Mr. Padilla was
unable to complete the job, Mr. Sadberry had to be hired.53

91. Mr. Petteruti testified that the Carol Rae Ranch Homeowners' Association
("the HOA") hired his company to put utility power in one of the side streets for lighting.
The power utility for the area was SRP. As part of the project, on Mr. Petteruti's advice,
the HOA hired Mr. Padilla to perform an easement survey that SRP required.

92. Mr. Petteruti attached to his complaint Mr. Padilla's April 5, 2013 Survey
Agreement, in which the scope of work included "[s]take for electrical equipment
installation as required by SRP."54

93. Mr. Petteruti also attached to the complaint email correspondence among
himself, the HOA's representative, and Mr. Padilla that referenced SRP's requirements,
including the following:

93.1 Mr. Petteruti's April 3, 2013 emails to Mr. Padilla, stating, "Here are the
requirements for SRP. Make sure you submit what they require" and, "Do you understand
what SRP requires?"55

93.2 Mr. Petteruti's April 12, 2013 mail to the HOA with a copy to Mr. Padilla,
stating, "We Charlie will then prepare all SRP requirements as noted per his scope. We
will have a pre con meeting with SRP."56

93.3 Mr. Petteruti's September 12, 2013 email to SRP, asking if Mr. Padilla had
resolved SRP's survey needs, SRP's September 16, 2016 email stating that "the surveyor
is required to hold adequate [Errors and Omission ("E&O")] insurance and list SRP as the
Certificate holder," that none of the requirements had been met, and that Mr. Padilla
stated that he did not have E&O insurance.57

53 See the Board's Exhibit 21.
54 Id. at P135.
55 Id. at P119-P120.
56 Id. at P121.
57 Id. at P131.
93.4 David Barnes' September 16, 2013 email to Mr. Padilla, stating, "Charlie, that is wrong of you and [your] license needs to be revoked" and that the HOA expected a full refund.68

93.5 Mr. Padilla's September 16, 2013 email, stating that he did not misrepresent his qualifications and that he was not made aware that he needed "][E&O] coverage to work for SRP" and that if he had, he never would have undertaken the project.59

93.6 Mr. Petteruti's September 24, 2013 email to Mr. Padilla, stating that "You called me and said you [were] all this and all was good. Why are we getting letters stating nothing has been done? ... This has been drawn out [too] long. I need answers now."60

93.7 Mr. Padilla's September 25, 2013 email to Mr. Petteruti, stating that "I am waiting on a response from my insurance co. for the E&O coverage. Once I have that I can submit whatever documents SRP requires of me."61

93.8 Mr. Padilla's April 26, 2014 email, denying that he had misrepresented his qualifications and stating that he did have insurance, but not the insurance required by SRP. Mr. Padilla stated that Mr. Petteruti never told him about SRP's requirements but that he had learned of the requirements directly from SRP.62

94. Mr. Petteruti also attached to his complaint a document entitled, "SRP Requirements for Results of Survey Documents for Easement Acquisitions," which included among its requirements that "Survey Firms are required to provide and maintain a valid Certificate of Insurance (E&O) that meets the specifications identified in Section 3.1 of this document."63

95. Mr. Petteruti testified that he was referred to Survey Arizona as a firm that had done work for SRP in the past and that was familiar with SRP's requirements. Mr. Petteruti testified that Mr. Padilla said he was part of the same company and mentioned Mr. Sadberry's name. Mr. Petteruti testified that Mr. Padilla assured him that he was familiar with SRP's requirements and would be able to meet such requirements.
96. Mr. Petteruti testified that he attached SRP’s Requirements for Results of Survey Documents for Easement Acquisitions to his April 3, 2013 email to Mr. Padilla. Mr. Petteruti testified that this was Mr. Padilla’s opportunity to say that he did not meet SRP’s requirements, but instead on April 12, 2013, Mr. Padilla stated that he would comply with SRP’s requirements per his scope of work.

97. Mr. Petteruti testified that at the first pre-construction meeting, Mr. Padilla was handed SRP’s Requirements for Results of Survey Documents for Easement Acquisitions and that, instead of asking questions, Mr. Padilla acted offended and stated that he knew SRP’s requirements.

98. Mr. Petteruti testified that because SRP never received evidence of Mr. Padilla’s E&O insurance that complied with SRP’s requirements, SRP could not accept his results of survey. As a result, the HOA was forced to hire Mr. Sadberry to complete the job. Mr. Sadberry testified that he could not use any of Mr. Padilla’s work in completing the job.

99. Mr. Barnes testified that he spoke to Mr. Padilla at the first pre-construction meeting and that he heard Mr. Padilla state that he understood SRP’s requirements and that he had done business with SRP in the past.

100. Mr. Barnes testified that the HOA paid Mr. Padilla $900.00 for the job and that it later paid Mr. Sadberry at least $2,500.00 to complete the job. Mr. Barnes testified that Mr. Padilla had not refunded any money to the HOA.

101. Mr. Padilla denied that he had ever received SRP’s Requirements for Results of Survey Documents for Easement Acquisitions. Mr. Padilla testified that although he has liability insurance, he does not have E&O insurance because it would cost $6,000.00/year. He could not justify that expense on a job the size of the HOA’s engagement. Mr. Padilla testified that all he did on the job was staking, which did not require E&O insurance.

102. Mr. Sadberry testified that he has done work for SRP in the past and that it has unique and demanding requirements, including E&O insurance.

103. Mr. Foose testified that it was incumbent on Mr. Padilla to understand SRP’s requirements before he undertook a job for which the scope of work referenced such requirements. Mr. Foose testified that SRP is very particular and that it is normal for
professionals employed on SRP projects to ask questions to ensure that they are able to meet SRP's requirements. Mr. Foose testified that, instead, Mr. Padilla misrepresented his own experience and qualifications.

**Case No. P15-045 (Mason)**

104. On or about January 8, 2015, Bonnie Mason filed a complaint with the Board against Mr. Padilla. Ms. Mason alleged among other things that her neighbor, Michael Stalker, hired Mr. Padilla to survey his property, that Mr. Padilla had relied on an inaccurate Pinal County map to perform the survey and, as a result, had located the property line through the middle of Ms. Mason’s swimming pool. Ms. Mason stated that “Mr. Padilla’s actions [have] caused me many hours of research and stress thinking part of our swimming pool was on Michael Stalker’s land.”

105. Ms. Mason testified consistently with her complaint. Mr. Stalker wished to build a shed on his property, but the Pinal County permit authority informed him that the planned shed was too close to the Masons’ property. Mr. Stalker approached her husband in November 2014, claiming that the Masons’ pool was on his property.

106. Ms. Mason testified that a few weeks later, Mr. Stalker engaged Mr. Padilla to perform a survey. Mr. Padilla began the survey in late November 2014. Ms. Mason testified that she allowed Mr. Padilla’s crew to come onto her property and that the crew set five survey monuments near the pool, which were approximately 30’ from Mr. Stalker’s fence. Mr. Stalker subsequently informed her that the survey that Mr. Padilla had performed showed the Masons’ pool encroached on his property.

107. Mr. Padilla testified that Mr. Stalker told him that Mr. Stalker and the Masons had come to an agreement that the Masons’ pool was partially on Mr. Stalker’s property and the Masons had agreed to have a survey done for a lot line adjustment and that, to accomplish the lot line adjustment, had agreed that Mr. Padilla’s crew could place survey monuments near the Mason’s pool. Although Mr. Padilla testified that he never spoke to Ms. Mason, he understood her acquiescence to his crew going into her backyard to support Mr. Stalker’s account. Mr. Padilla testified that he did not believe that the

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64 The Board’s Exhibit 42 at P295.
survey that he performed for Mr. Stalker was to resolve a disputed property line because
the Masons had already agreed to the encroachment.

108. Ms. Mason testified that from the beginning, Mr. Stalker's claim seemed
invalid because she had lived on the property since 1988, when it was the only house in
the section, and she knew of existing monuments reflecting the correct property line
dating back to the 1970's.

109. Ms. Mason testified that her neighborhood consisted of equal sections and
quarter sections, or aliquot parcels, and Mr. Padilla's survey would have created an
unequal section. The recorded deed for her property showed that it was a quarter
section. The property line on Mr. Padilla's survey would not only cut through her pool,
but extending the line would cut through the roof on a neighbor's house.

110. Ms. Mason and her husband planned to retire, to sell their house, and to
purchase an RV. With Mr. Padilla's monuments in the ground in her backyard, Ms.
Mason knew there was a cloud on the title to her house. She researched the issue and
concluded that Mr. Padilla had relied on a Pinal County Assessor map to establish the
locations of his monuments and to prepare the results of survey drawing that he provided
to Mr. Stalker. Ms. Mason testified that Mr. Stalker did not show her the drawing but
only threatened to bulldoze her pool and fence based on the drawing.

111. Ms. Mason testified that she called Mr. Padilla's Phoenix office and that a
man answered and told her that because it was not a more complex ALTA survey, county
maps and possibly deeds would have been used for the survey.

112. Mr. Padilla testified that he is the only one who answers his office phone
and the Ms. Mason never called him. At some point, another of Mr. Padilla's crews
removed three of the five pins that the earlier crew had set without Ms. Mason's
knowledge.

113. Ms. Mason went to the Pinal County Assessor's Office with her evidence
and eventually it corrected its map. Because Mr. Padilla's monuments were still in her
backyard, Ms. Mason paid RLS Jay K. Vaughn $1,500.00 to perform a survey that
showed the correct property line so that she and her husband could sell their property.

56 See the Board's Exhibit 43 at P315.
58 See the Board's Exhibit 43 at P315, Exhibit 49 at P350.
114. Mr. Vaughn eventually recorded a record of survey that showed the correct property line, as well as the two monuments that Mr. Padilla's crew had left on Ms. Mason's property.  

115. Mr. Padilla testified that he realized that his crew had left the two monuments when he saw Mr. Vaughn's survey. Mr. Padilla testified that he removed the last two monuments shortly before the hearing in this matter.

116. On or about March 4, 2015, Mr. Padilla recorded his survey, which showed the correct property line but did not show any of the monuments that he had placed on Ms. Mason's property.

117. The Board asked RLS Stan Dickey and RLS Dwayne Lee Haught to review Ms. Mason's complaint. On June 3, 2015, Mr. Haught opined that Mr. Padilla had violated ABSMS #2, #3, and #4, as well as A.A.C. R4-30-301(6) by using a tax assessor's map to establish a property line and setting boundary monuments that conflicted with the adjoining land's legal description, which caused Ms. Mason to incur the cost of Mr. Vaughn's survey.

118. On July 8, 2015, RLS Dickey stated that "it is obvious to me that Mr. Padilla also failed to properly search for and heed physical evidence affecting the location of the boundary being retraced." Mr. Dickey opined that Mr. Padilla had performed a survey and the fact that he marked the survey as being preliminary was irrelevant "in the face of improperly established physical monumentation placed on the ground and representing the boundary between Mason and Stalker," Mr. Dickey also opined that Mr. Padilla's recorded results of survey was deficient because it did not include the monumentation that Mr. Padilla had set, which was shown on Mr. Vaughn's recorded survey.

119. On December 14, 2015, an EAC composed of Chairman Christopher P. McDonald, RLS, and members David Dicky, RLS, and Todd Rakstad, RLS, considered Ms. Mason's complaint. The EAC unanimously voted to substantiate the following three allegations:

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67 See the Board's Exhibit 49 at P349.
68 See the Board's Exhibit 49 at P347, Mr. Padilla's Exhibit 00.
69 The Board's Exhibit 46 at P338.
119.1 That Mr. Padilla violated A.A.C. R4-30-304(D)(2) by providing a preliminary
drawing to Mr. Stalker, knowing that the document would be used for dispute resolution or
arbitration (severity level of 10, which is the highest);

119.2 That Mr. Padilla failed to conduct a land survey in accordance with the
ABSMS in violation of A.A.C. R4-30-301(6) and (13) and A.R.S. § 32-128(4) (severity
level of 10); and

119.3 That Mr. Padilla violated A.R.S. § 33-105 by failing to record a land survey
with 90 days of completion, noting that Mr. Padilla had been paid in full for the survey and
had set monumentation (severity level of 8).\(^7\)

120. The EAC concluded its report to the Board with the following
recommendations:

Throughout the investigation process, [Mr. Padilla] does NOT
understand the basic principles of land surveying by NOT
utilizing legal descriptions of the property and all property that
could be affected by the survey.

The respondent was not fully aware of the methods and
practices associated with conducting a survey.\(^7\)

121. Mr. Foose testified that county assessor maps are not recorded documents.
The standard of care required surveyors to consider physical evidence like houses,
fences, or pools, especially in a case where there appears to be a gross inaccuracy, like
this one. Mr. Foose would have researched the matter further before he gave a drawing
to his client. Even if Mr. Stalker had told Mr. Padilla that the Masons were cooperating,
the project involved a disputed boundary that required Mr. Padilla to comply with A.A.C.
R4-19-404(D).

122. Mr. Foose testified further that Mr. Padilla did not conduct adequate
research as ABSMS #2 requires. Mr. Foose agreed with Ms. Mason that her land was an
aliquot parcel, yet Mr. Padilla still drew a map and placed monuments reflecting an
unequal parcel. Mr. Foose noted that even the final map that Mr. Padilla prepared noted
reliance on only two documents and did not include a reference to the Government Land

\(^7\) See the Board's Exhibit 46.
\(^7\) Id. at P345.
Office ("GLO") monument and recordings related to the original aliquot sectioning. Mr. Foose testified that ABSMS #3 required Mr. Padilla to reference these GLO materials and noted that HLS Vaughn's survey referenced the GLO monuments.

**Case No. P15-090 (Solomon)**

123. On or about June 11, 2015, Constantin Solomon filed a complaint against Mr. Padilla with the Board, alleging that he had paid Mr. Padilla in full to perform a survey to establish boundaries of a lot that Mr. Solomon owned but that Mr. Padilla had not completed the survey.

124. Mr. Solomon attached to the complaint Mr. Padilla's May 16, 2015 email, stating that "[w]e were out there this past week and found most of the control we needed to do the survey," but that "[w]e found some discrepancies in dimensions and we are cross referencing with other documents," and that "[w]e will be back this coming week to complete the survey once have checked everything again." On May 27, 2015, Mr. Solomon responded to Mr. Padilla's email, requesting a "survey certification for the work you did for me having the pertinent info dated and signed."  

125. Mr. Solomon also attached to the complaint Mr. Padilla's May 8, 2015 Survey Agreement, which provided that "[t]his survey does not include a map." Mr. Solomon testified that he was not sure what to expect but that he at least expected surveyor's pins or a receipt of payment to show that Mr. Padilla had confirmed the property boundary.

126. Mr. Solomon testified that he was constructing a custom home and wanted to formally establish that a wall he planned to build did not encroach on his neighbor's property. Mr. Solomon testified that Mr. Padilla said the survey would take about a week. Mr. Solomon testified that he made the mistake of paying Mr. Padilla in full for the work before he performed any work.

127. Mr. Solomon testified that Mr. Padilla was able to find monuments marking 3 of the 4 property corners. However, there was nothing to mark the southwest corner of the property. Mr. Solomon testified that he could see a stake that Mr. Padilla placed, but

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72 The Board's Exhibit 50 at P354.
73 Id. at P356.
that it meant nothing and that he needed something to prove to a neighbor that he had hired a licensed surveyor to perform a survey before he constructed the wall.

128. Mr. Solomon testified that after Mr. Padilla sent the May 16, 2015 email, he called Mr. Padilla on May 27, 2015, and confirmed that Mr. Padilla would send him a written, signed, and dated certification. Mr. Solomon testified that he did not receive a written, signed, and dated certification and that Mr. Padilla stopped returning his calls after that May 27, 2015 telephone conversation. Mr. Padilla did not return any of the $400.00 that Mr. Solomon had paid for the survey.

129. The Board informed Mr. Padilla of Mr. Solomon's complaint. On July 17, 2017, Mr. Padilla's attorney responded, stating that Mr. Padilla would record the results of survey drawing because he had found a missing pin. Mr. Padilla's attorney explained that even though the Survey Agreement provided that it did not include a map, Mr. Padilla agreed to create a map if the ABSMS required him to do so, but Mr. Solomon did not want a map.

130. Mr. Padilla testified that he placed the pins based on a mathematical calculation. Mr. Padilla created a results of survey drawing on September 11, 2015, and recorded the drawing on October 5, 2015. Mr. Padilla explained that it took longer to complete the survey because his associate RLS Stroup did not agree with the positions. Mr. Padilla testified that he mailed the drawing to Mr. Solomon.

131. In December 2016, Mr. Solomon testified that he did not know that a drawing existed.

132. On his drawing, Mr. Padilla rejected existing monuments at all four corners and set his own. Mr. Padilla noted the distance by which his positions differed from existing monuments, but did not provide any explanation or justification for his disagreement with the existing monuments. Mr. Padilla did not personally attempt to contact the surveyor whose monuments he had rejected, but testified that his associate RLS Stroup contacted the surveyor.

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74 See the Board's Exhibit 52 at P360.
75 See Mr. Padilla's Exhibit QQ at 2.
133. On or about January 6, 2016, RLS Stan Dickey reviewed Mr. Solomon's complaint and Mr. Padilla's attorney's response to the complaint. RLS Dickey opined that Mr. Padilla violated applicable standards in three respects, as follows:

133.1 Mr. Padilla failed to provide land survey services in accordance with the ABMS, in violation of A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13). Although Mr. Padilla appeared to have conducted a thorough investigation of county records, older surveys abutted the subject property. Mr. Padilla violated ABMS #4 by failing to conduct sufficient filed research necessary to disprove the monuments he rejected at the four corners of the subject property. In addition, Mr. Padilla's plat failed to mention whether he attempted to resolve the disagreement with the monumented positions in violation of ABMS #7.

Finally, Mr. Padilla's plat failed to explain in detail the reason(s) for not accepting the four monuments at the four corners of the surveyed property, in violation of ABMS #8(A).\(^5\)

133.2 Mr. Padilla violated A.A.C. R4-30-301(6) through his inability to apply the technical skill and knowledge to complete the survey. Mr. Dickey explained that measurements should be used as a tool to prove the corners of a parcel, not to establish absolutely the position of a corner of the parcel. Measurements and mathematical calculations based on those measurements are only one form of evidence that a surveyor must consider; the documents referenced on the face of Mr. Padilla's plat were other forms of evidence that should have been considered. The Bartlett survey referenced on Mr. Padilla's plat dates to 1958 and refers to a pipe set at the northwest corner of the subject parcel and appears to establish the west property line of the adjacent parcel. Mr. Padilla referred to and rejected the pipe in favor of a purely mathematical position without any effort to re-establish the positions referenced in the Bartlett survey. Mr. Dickey opined that "[t]his is the antithesis of land surveying and a violation of [A.A.C.] R4-30-301(6).\(^7\)"

133.3 Mr. Padilla violated A.A.C. R4-30-301(2) by misrepresenting his ability to serve Mr. Solomon's needs. Mr. Dickey opined that "I do not believe that Mr. Padilla is

\(^5\) See the Board's Exhibit 54 at P366-P367.

\(^7\) Id. at P367.
capable of performing a correct survey; therefore, he should not be advertising to or accepting money from clients for doing the same.\textsuperscript{78}

133.4 Mr. Dickey did not find that Mr. Padilla had violated A.A.C. R4-30-301(2) by presenting a misleading contract that included language that mitigates the obligation to record a survey because "[a]lthough it is insinuated in the [ABSMS] that a plat shall be compiled for every engagement, the [ABSMS] do not specifically state this" and "I believe it is the right of every practicing [surveyor] to limit the items contained in his contract."\textsuperscript{79}

134. On May 19, 2016, an EAC comprised of chairman RLS Daniel R. Muth and members RLS James E. Muth, RLS Ronald Barbala, and RLS Vern Lewis discussed whether Mr. Padilla had violated ABSMS #1, #2, #4, and #7, and determined to agree with Mr. Dickey on all counts. The EAC noted that Mr. Padilla's departures would impact an existing fence line and that his drawing included Note #2 that expressly stated that he did not search existing record information. The EAC made the following determinations:

134.1 With respect to the allegation that Mr. Padilla failed to provide land survey services in accordance with the ABSMS in violation of A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(13), the EAC voted unanimously to substantiate the allegation (severity level of 10).\textsuperscript{80}

134.2 With respect to the allegation that Mr. Padilla violated A.A.C. R4-30-301(6) through his inability to apply technical skill and knowledge to complete a task, the EAC discussed "the fundamental issues associated with boundary surveying and how it related to these types of cases" and voted unanimously to substantiate the allegation (severity level of 10).\textsuperscript{81}

134.3 With respect to the allegation that Mr. Padilla violated A.A.C. R4-30-301(2) by misrepresenting his ability to serve Mr. Solomon's needs, the EAC commented on Mr. Padilla's "apparent lack of knowledge displayed by the record of survey" and voted unanimously to substantiate the allegation (severity level of 10).\textsuperscript{82}

\textsuperscript{78} Id.
\textsuperscript{79} Id. at P367.
\textsuperscript{80} See the Board's Exhibit 55 at P370-P371.
\textsuperscript{81} See id. at P371.
\textsuperscript{82} Id. at P371-P372.
134.4 Although Mr. Dickey expressly did not find that Mr. Padilla violated A.A.C. R4-30-301(2) through the presentation of a misleading contract that mitigated the obligation to record a survey, the EAC “was not swayed by [Mr. Padilla’s] attorney’s argument that the reference to a map in the service agreement was not synonymous with the record of survey,” and voted unanimously to substantiate the allegation (severity level of 10).23

135. The EAC assigned to the complaint identified the previous surveyor’s registration number from the survey and obtained his contact information from the Board’s registry. When the EAC contacted the surveyor, he stated that he was never contacted about the Padilla survey.24

136. Mr. Foose agreed with Mr. Dickey and the EAC that Mr. Padilla had violated ABSMS 6(A) by failing to explain his reasons for rejecting the other surveyor’s monuments. He explained that Mr. Padilla appeared to be “running geometry” around a parcel, which was not an accepted surveying method.

CONCLUSIONS OF LAW

1. This matter lies within the Board's jurisdiction.25

2. The Board bears the burden of proof to establish cause to discipline Mr. Padilla’s Land Surveyor Registration by a preponderance of the evidence.26 Mr. Padilla bears the burden of proof to establish affirmative defenses and factors in mitigation of the penalty by the same evidentiary standard.27

3. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”28 A preponderance of the evidence is “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable

23 Id. at P372.
24 See the Board’s Exhibit 55 at P371.
26 See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also Vazanno v. Superior Court, 74 Ariz. 389, 372, 249 P.2d 937 (1952).
27 See A.A.C. R2-19-119(B)(2).
doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."  

4. The purpose of the Board is to "protect the public safety and welfare by regulating architects, assayers, engineers, geologists, home inspectors, landscape architects and land surveyors."  

5. The Board is not authorized to resolve common-law or statutory trade name infringement claims. Mr. Padilla and Mr. Sadberry must resolve any claims they have against each other in a court of competent jurisdiction. However, the Board is authorized to resolve claims that a registered surveyor materially misrepresented his affiliations or qualifications. See A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(2).  

6. A recurrent charge was that Mr. Padilla failed to timely record the results of a survey in violation of A.R.S. §§ 33-105 and 32-128(C)(4), A.A.C. R4-30-301(13), and ABSMS #13. A.R.S. § 33-105(A) provides as follows:

A land surveyor shall file a record of a land survey not later than ninety days after its completion with the county recorder of the county where the land is located if such survey establishes points or lines relating to land boundaries or property lines disclosing:

1. A material discrepancy based on the accuracy requirements of the current survey which, in whole or in part, does not appear on any map or record previously recorded or filed with the county recorder, county engineer, highway division of the department of transportation or the United States bureau of land management.

2. Evidence that, by reasonable analysis, might result in alternate positions of lines or points.

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89 BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).
90 Laws 2006, Ch. 43, § 3.
91 A.R.S. § 32-128(C)(4) provides among the grounds for disciplinary action against the officer of a registration "[v]iolation of this chapter or rules.
92 A.A.C. R4-30-301(2) provides among the rules of professional conduct with which registrants must comply the following:

A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
A.A.C. R4-30-301(13) requires professional land surveyors to comply with the ABSMS, in relevant part as follows:

To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards.

ABSMS #13 provides in relevant part as follows:

The land surveyor shall ensure that the appropriate survey drawing(s) is(are) recorded whenever any of the following conditions are encountered:

A. Any land boundary survey monument found, and incorporated into the new survey, where that monument is not referred to in or by any previously recorded public record instrument.

B. Any existing land boundary monument, or found monument, referenced in a previously recorded public document, when the public document fails to adequately identify said monuments.

C. Any land boundary monuments are set in conjunction with the new survey.

7. A.R.S. § 33-105(A) requires a surveyor to record a results of survey within 90 days after completion, which the statute does not define, if there are alleged discrepancies or alternate points. None of the complaints involved alleged discrepancies or alternate points. As the Board's attorney pointed out, A.R.S. § 33-105(A) is found in Title 33, relating to property generally, not Title 32, relating to the regulation of licensed professionals, including registered land surveyors. If there is a conflict, the more specific provisions that are expressly intended to govern land surveyors that are set forth in A.R.S. § 32-128(C)(4), A.A.C. R4-13-301(13) and ABSMS #13 should control. 93

8. ABSMS #13(A) and (C) unequivocally require a surveyor to record the results of survey drawing any time he places a new monument or finds a monument that has not been previously recorded. ABSMS #13 does not refer to completion or provide a time for the recording. RLS Vaughn’s recording of the survey that showed Mr. Padilla’s monuments on Ms. Mason’s land and the subsequent surveyor’s recording of the survey that showed Mr. Padilla’s monuments set for the land split between Mr. Leahy and Mr. Lozoya demonstrate compliance with ABSMS #13(A) and (C): Finding an unrecorded monument or setting a new monument requires a surveyor to record a results of survey drawing. RLS Foose, RLS Daniel Muth, RLS Dickey, RLS Haught, RLS McDonald, RLS Rakstad, RLS James Muth, RLS Barbala, and RLS Lewis confirmed the requirement of the unequivocal language of ABSMS #13 that, as soon as a surveyor sets or finds monuments, he is obligated to record a results of survey. Mr. Padilla’s unsuccessful attempt to retrieve the five unrecorded monuments from Ms. Mason’s backyard illustrates the harm to the public that ABSMS is designed to avoid by requiring surveyors to have completed their research and to be confident of the property boundary before they set monuments. Otherwise, the burden is on members of the public to incur the cost of correcting a surveyor’s improvidently placed monuments, as happened in Ms. Mason’s case.

Case No. M13-002 (Miller)

9. Mr. Padilla placed monuments on the property that Ms. Miller asked him to survey and expected her to approve the monuments and to pay him the rest of the price of the survey before he recorded his results of survey drawing. No statute, regulation, or ABSMS allows a surveyor to avoid the obligation that ABSMS #13(C) imposes to record the survey based on a client’s failure to approve a survey or to pay the surveyor the full price of the survey. The Board therefore established cause to discipline Mr. Padilla’s registration under A.R.S. § 32-128(C)(4), A.A.C. R4-30-301(13), and ABSMS #13(C).

10. The Board also established cause to discipline Mr. Padilla’s registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(2) by misrepresenting that he would obtain Ms. Miller’s approval before he recorded the results of survey because no statute, regulation, or ABSMS allows a surveyor to condition his obligation to record a results of survey drawing on a client’s approval.
11. The Board also established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(6) by stating that he was unable to contact Ms. Miller when he had made no meaningful attempt to retrieve her contact information.

Case No. M13-033 (Anonymous (Land Split))

12. Mr. Padilla placed monuments on Mr. Leahy's property in preparation for the land split and sale of a portion of the parcel to Mr. Lozoya. No statute, regulation, or ABSMS allows a surveyor to avoid responsibility for recording monuments that he sets by delegating the task to another. No statute, regulation, or ABSMS allows a surveyor to delay recording monuments that he has set until after the local governmental authority has approved a contemplated land split. The Board therefore established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4), A.A.C. R4-30-301(13), and ABSMS #13.

Case No. A13-015 (Rappazzo/Metro Parkway)

13. Mr. Padilla attempted to charge Mr. Rappazzo's credit card for the full contract price of the ALTA/ACSM survey that was needed to obtain a use permit from the City of Phoenix for a marijuana dispensary. Mr. Padilla submitted a signed and sealed drawing dated April 14, 2013. The Board established that Mr. Padilla completed the scope of services for the engagement, as well as he was able, and that his work product was subject to review and evaluation.

14. Mr. Rappazzo credibly testified that he found Mr. Padilla through a search for Mr. Rappazzo at Survey Arizona and that Mr. Padilla stated that Mr. Sadberry worked for Mr. Padilla. The Board established that Mr. Padilla misrepresented his connection to Mr. Sadberry, his competence to perform an ALTA/ACSM survey, and his ability to meet deadlines imposed by the City of Phoenix to perform a survey to support a use permit application for a marijuana dispensary. The Board thereby established cause to

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94 A.A.C. R4-30-301(6) includes among the professional standards with which registrants are required to comply the following:

A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(2) by

15. RLS Daniel Muth and the EAC expressed concerns about numerous technical deficiencies in Mr. Padilla's work and he admitted to not having completed ALTA/ACSM requirements. The Board established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(6) by failing to apply the appropriate technical knowledge and skill that would be applied by other qualified registrants.

16. The Board established that Mr. Padilla failed to comply with ABSMS #12(A), and #14(E)(2)(a) and (b) in the legal description on his drawing. The Board established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(13).

**Case No. A13-018 (Cruz)**

17. Unlike the EAC, the Administrative Law Judge was able to gauge Mr. Cruz's credibility. Mr. Cruz credibly testified that Mr. Padilla twice confirmed to him that the surveyor's stake hanging on a string from the post at the end of the fence marked one of the corners of his property. Therefore, the Board established that Mr. Padilla misrepresented his ability to meet promised deadlines, provided a misleading survey certification, and concealed his error in locating and twice confirming an incorrect property.

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95 ABSMS #12(A) provides that certain criteria shall be adhered to when the surveyor includes any of the following as part of the results-of-survey drawing, including "horizontal and/or vertical control data, when used, shall be noted in detail. Where vertical data is referenced, the surveyor shall also include information about the controlling benchmark(s) and its (their) elevations." The Board's Exhibit 67 at 3. As noted above, Mr. Padilla's survey agreement required him to provide an ALTA/ACSM drawing and he acknowledged that he did not provide vertical elevations.

96 ABSMS #14(E)(2)(a) and (b) provide in relevant part as follows:

For new [property descriptions], the following items and format apply:

... .

E. Every written property line boundary description shall contain the applicable portions of the following:

... .

2. The second part, called the body, shall contain all of the following attributes that apply:

  a. A clearly stated basis of bearings, referencing two controlling monuments, which were physically existing at the time the property was surveyed.
  b. All controlling monuments, noting their physical description, and whether found, set or replaced.

The Board's Exhibit 67 at 6.
corner. The Board thereby established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(2).

18. Mr. Cruz hired Mr. Padilla to perform a survey to obtain peace of mind that when he built his fence, he would build it on his own property. Mr. Padilla gave Mr. Cruz erroneous advice and did not prepare a drawing to ensure that Mr. Cruz obtained the benefit of hiring a surveyor. The EAC questioned whether Mr. Padilla had even surveyed the property, based on his failure to provide records of the data that he used to perform the survey. The Board established that Mr. Padilla's survey, if he actually performed one, fell below the standard of care for registered surveyors, thereby establishing cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(6).

19. The Board established that Mr. Padilla failed to comply with ABSMS #2 by failing to obtain and examine record documents when he performed the survey for Mr. Cruz, thereby establishing cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(3).

Case No. P14-082 (Petteruti/Carol Rae Ranch)

20. Mr. Petteruti credibly testified that Mr. Padilla stated that he was part of the same company as Mr. Sadberry and that he was familiar with and met SRP's requirements. The Board established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(2) by misrepresenting his connection to Mr. Sadberry and ability to comply with SRP's requirements.

Case No. P15-045 (Mason)

21. The Board established that Mr. Padilla placed monuments on Ms. Mason's property and provided a drawing to his client Mr. Stalker based solely on a county assessor's map or where Mr. Stalker said Ms. Mason had agreed the property line was located, without considering recorded documents, the boundaries of adjacent parcels, or physical evidence, such as Ms. Mason's pool and her neighbor's roof. RLS Dickey, RLS Haught, RLS McDonald, and RLS Rakstad all opined that Mr. Padilla's performance of the survey fell below the standard of care for an RLS. The Board thereby established

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ABEMS #2 provides that "[t]he land surveyor shall obtain and examine the record documents needed to perform the survey as described in the scope of services." The Board's Exhibit 67 at 1.
cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(6).

22. The Board established that Mr. Padilla failed to consider recorded documents, failed to consider the GLO monument for Ms. Mason's aliquot parcel, and failed to consider the pool and Ms. Mason's neighbor's roof in setting his monuments and determining the property line, in violation of ABSMS #2, #3, #8 and #4. Mr. Padilla also violated ABSMS 13(C) by setting monuments without recording a drawing that showed the monuments. The Board thereby established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(13).

23. Mr. Padilla gave Mr. Stalker an unsigned drawing, even though he knew that Mr. Stalker alleged a substantial encroachment and that the purpose of the drawing was to resolve the encroachment, amicably or otherwise. The Board established that Mr. Padilla failed to sign, date, and seal a professional document, even though the document was prepared for the purpose of dispute resolution, in violation of A.A.C. R4-30-304(D)(2). The Board thereby established additional cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4).

Case No. P15-090 (Solomon)

24. The Board established that Mr. Padilla accepted Mr. Solomon's payment up front, then promised Mr. Solomon that the survey would take about a week. The project took five months to complete and, as of December 2016, Mr. Solomon still had not received a drawing. The Board thereby established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(2).

25. The Board established that in performing Mr. Solomon's survey, Mr. Padilla relied exclusively on mathematical calculations to reject existing monuments at all four

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88 ABSMS #3 provides that "[i]f the subject property is described as an aliquot part of, or as a fraction thereof, or referenced to the United States Public Land survey System, the surveyor shall consult the pertinent United States Public Land Survey System source documents." The Board's Exhibit 67 at 1.

89 ABSMS #4 provides that "[t]he land surveyor shall search for physical evidence that could affect the location and/or placement of boundary lines and property corners of the subject property." The Board's Exhibit 67 at 1.

100 A.A.C. R4-30-304(D)(2) provides in relevant part as follows:

A registrant shall sign, date, and seal a professional document:

2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.
corners of the property, instead of also considering recorded documents and fences and other physical evidence, and failed to contact the surveyor whose monuments he rejected, in violation of ABSMS #1, #2, #4, #7, and #8(A). The Board thereby established cause to discipline Mr. Padilla's registration under A.R.S. § 32-125(C)(4) and A.A.C. R4-30-301(13).

26. The Board established that RLS Dickey, RLS Daniel R. Muth, RLS James E. Muth, RLS Barbara, and RLS Lewis found that when Mr. Padilla surveyed Mr. Solomon's property, he failed to apply the technical knowledge and skill that would be applied by other qualified registrants who practiced the same profession in the same area and at the same time. The Board thereby established cause to discipline Mr. Padilla's registration under A.R.S. § 32-128(C)(4) and A.A.C. R4-30-301(6).

Factors in Mitigation and Aggravation

27. The deliberations and conclusions of the EACs chaired by RLS David Shane in Case Nos. M13-002 and M13-033 mention only A.R.S. § 33-105, not ABSMS #13. Mr. Shane's strong opinions and the apparent confusion in the industry before July 2014, are considered as factors in mitigation of the penalty imposed on Mr. Padilla's registration for failing to record a results of survey immediately after he placed new monuments.

1 ABSMS #7 provides as follows:

In the event of a disagreement with the measurements and/or monumented corner positions of another registrant, the land surveyor must make and document all reasonable efforts to contact the other registrant in an attempt to resolve the disagreement. The other registrant(s) shall make all information relevant to the disagreement available, to explain objections, and afford an opportunity for discussions, explanation and corrections necessary.

The Board's Exhibit 67 at 2.

3 ABSMS #8(A) provides as follows:

The land surveyor shall represent the locations, consistent with the best evidence available, of corner positions and boundary lines, as follows:

(A) if the land surveyor rejects an existing monument the land surveyor shall create a results-of-survey drawing that discloses the evidence, and shall explain in detail, the reason(s) for not accepting the monument. The surveyor shall file the drawing in the office of the county recorder, and provide a copy of the "record of survey" to the client.

The Board's Exhibit 67 at 2.
This matter involves seven complaints from unrelated persons over a little more than two years. The first complaints were filed at the beginning of Mr. Padilla's career, when he had been only licensed for five years. Mr. Padilla's responses to the complaints indicate that through his internet marketing efforts, he may have been accepting more surveying engagements than his health and personal circumstances allowed him to complete in a manner that complied with A.R.S. § 32-128(C)(4), A.A.C. R4-30-301, and the ABSMS. Even after Mr. Padilla received notice of and was forced to respond to the earlier complaints, however, he did not change his marketing strategy or question his approach to surveying. With the exception of Mr. Padilla's acknowledgment that he failed to cite vertical datum in his survey of the planned location of the marijuana dispensary in case no. A13-015, Mr. Padilla failed to consider the opinions of numerous other registrants who criticized his work and found specific departures from professional survey standards and the ABSMS. Instead, Mr. Padilla blamed the purported motivations of the complainants, witnesses, and the RLS's who reviewed his work. Mr. Padilla's failure to take responsibility for his actions and lack of accountability indicate that at this time, he cannot be regulated.

The Board established that Mr. Padilla's unprofessional survey practices damaged Ms. Miller in the amount of $1,200.00 (case no. M13-003), Carol Rae Ranch in the amount of at least $900.00 (case no. P14-082), Ms. Mason in the amount of $1,500.00 (case no. P15-045), and Mr. Solomon in the amount of $400.00 (case no. P15-090). Even if there was evidence that Mr. Padilla was willing to consider other RLS's opinions on the standard of care and to change his surveying practices, no evidence was offered that any course work was available that might rehabilitate Mr. Padilla's professional survey practices so that he did not pose a danger to the public. Because the Administrative Law Judge recommends that Mr. Padilla professional land surveyor registration be revoked, instead of that his registration be placed on probation, she does not recommend that he be required to pay restitution to the clients and other persons of the public who suffered an economic loss that resulted from Mr. Padilla's violation of A.R.S. § 32-128(C)(4), A.A.C. R4-30-301, and the ABSMS.¹º³

¹º³ A.R.S. § 32-128(A) provides discipline that the Board may impose on a registration, in combination or alternatively, including the following:
RECOMMENDED ORDER

Based on the foregoing, it is recommended that on the effective date of the final order in this matter, Professional Land Surveyor Registration No. 46474 previously issued to Respondent Carlos Padilla shall be revoked pursuant to A.R.S. § 32-128(A)(1).

It is further recommended that Mr. Padilla shall be assessed the Board's reasonable costs and expenses, including attorney's fees, incurred in conducting its investigation and taking this matter to hearing pursuant to A.R.S. § 32-128(H).

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days from the date of that certification.

Done this day, June 8, 2017.

/is/ Diane Mihalsky
Administrative Law Judge

Transmitted electronically to:

Melissa Cornelius, Executive Director
Board of Technical Registration

6. Imposition of probation requirements that are best adapted to protect the public safety, health and welfare and that may include a requirement for restitution payments to professional services clients or to other persons suffering economic loss resulting from violations of this chapter or rules adopted pursuant to this chapter.