

# MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS

## BOARD OF DIRECTORS MEETING

January 6, 2004 – BOD Teleconference Meeting 5:30 PM

**CALL TO ORDER:** President Bryan Block called The MARLS Board of Directors' meeting to order January 6, 2004 at 5:36 P.M.

### **ROLL CALL**

#### MARLS Board of Directors

President Bryan B. Block  
President-elect Gerald A. Pavlick  
Vice-President Thomas M. Henesh  
Past President Linda S. Smith  
Secretary/Treasurer James H. Burton  
Northwest Chapter President Jane Eby – proxy Linda Smith  
Western Chapter President -Toby Dumont  
South Central Chapter President - Steven C. Anderson  
Central Chapter President - Thomas E. Stark  
Southeast Chapter President – Neil A. Bratton  
North Central Chapter President – Stephen D. Babb  
Southwest Chapter President – Erland Gendreau  
Northeast Chapter President – Troy Jensen

#### Committee Chairpersons present

Board of Registration – Warren Latvala  
Standards of Practice – Craig L. Brown  
Continuing Education - Debi Anderson  
Trig-Star – Randy Thomas

Administrative Secretary – Kay McDonald

**Determination of Quorum** – a quorum present

**Introduction of Guests:** James Hahn, MT Board of PE & LS, Dan McGee, MARLS member, MT State Senator

**The purpose of this special meeting of MARLS is to continuing the discussion of the Unlicensed Surveying Complaint filed by MARLS and the motion made by Warren Latvala at the December 4, 2003 meeting regarding the unlicensed surveyor complaint MARLS filed with the MT Board of PE & LS regarding the surveyor complaint in Northeast Montana and the motion to write the Governor.**

President Block would like to follow parliamentary procedures on this motion. The MT Board of PE & LS dismissed the complaint submitted to the screening panel without prejudice and this means the complaint may be re-filed with the MT Board of PE & LS and he stated maybe MARLS should reconsider the motion made. Bryan re-read the eight violations (listed below) to the BOD at this meeting and the BOD discussed and reviewed the complaint and the motion made at the December 4, 2003 meeting with the following comments regarding the dismissal and motion:

Warren stated after the decision he spoke with Todd Boucher and the committee just got a brief summary from Todd. He acknowledged that he forgot to mention to the screening panel regarding the section “a Professional Land Surveyor on staff or in resident” (37-67-320 B & C). Warren felt the Board members of the screening panel had not had time or taken time to review the complaint or read the statutes. They were trying to be responsible but didn't actually read the laws. It is obvious there is no resident surveyor as an employee, or in-office or in a branch office.

Questions: Was this unlicensed surveyor soliciting surveying business? Did MARLS have a committee to compile all of the evidence? Should MARLS re-file the complaint? Was there sufficient time for these people to review the complaint? Was this a rubber stamp, logo on plat?

Dan McGee stated MARLS has a very real issue before the MT Board of PE & LS in regards to the motion. For thirty years or more the Board of PE & LS was under the Department of Commerce and a staff attorney that disbursed information in regards to the rules and the laws and interpretations of the same with regards to the Subdivision and Platting Act, etc. Now the MT Board of PE & LS has been transferred to the Department of Labor and Industry. Now the Board of PE & LS has autonomy to make decisions on the laws, rules and regulations. As the Board begins under this new division great harm would be done if letters were written to the Governor. The surveyor members of the Board have the opportunity to interpret law in light of how surveyors actually see the laws and we won't be getting off the wall interpretation we have seen in times past. We need to trust the Board of PE & LS has done its job as best as it could regard to the evidence presented. If the evidence were insufficient perhaps a re-file and reconsideration of complaint would be necessary. But that is a separate question than writing a letter to the Governor. If we ever want the surveying profession recognized as a profession, if we ever hope to have interpretation of the laws, rules, principle of legal boundary law, etc. pervasive throughout the planning community, the surveying community, etc. that is going to have to come, in my opinion, from the surveying members of the Board of PE & LS. If it comes from any other

source then they would never understand our profession. My comments are limited only to this issue of whether or not to write the letter to the Governor. The likelihood of ever segregating the surveyors from the engineers and having a separate board is virtually nonexistent, no funding, nor would the legislature ever support something along those lines. I would caution BOD and MARLS, as a whole, that if you decide to go ahead with your letter you may win a particular battle but the war would be lost. Discussing this with a Board member as we are doing now is the correct venue to work out problems and differences that exist and how MARLS proceeds with the Board on the complaint.

Warren felt surveyors are a minority of the Board and seen the Board act on complaints a number of times where there were blatant violations of the Statute and the Regulations have been sent to the screening panel and not acted upon it. Ron Allen (past member of the Board of PE & LS) stated to Warren that the proceedings for the meetings are not received in time to be able to review all the evidence and be fully prepared. Because of that the BOD is not prepared. Ron felt we either need a separate board or greater representation on the BOD of Reg.

Greg Martinsen was invited and unable to attend the meeting. He wrote and felt the MARLS BOD would request a meeting between the BPELS and the Board of Registration Committee in order that we may be given a clear understanding of why the BPELS made the decision that they did. This is not intended as a meeting to tell the BPELS how wrong they are but to listen to them in order that we can find out the basis for their decision.

Debi Anderson stated we aren't upset with one complaint. This is about several complaints filed over the past years. Fourteen other states have their own board.

Dick Ainsworth stated he felt the letter to Governor is a mistake. It is great to aspire to have your own surveyors' board but agree with Dan, that the likelihood of own surveyors board in the State of Montana is slim to none, but it doesn't mean we shouldn't try to do that. The Board of Registration MARLS is not MARLS Board, never will be MARLS Board, should not be MARLS Board whether it is all surveyors, whether it is surveyors, engineers and public members. It is not a board of this association and no matter who is on the Board MARLS might not like the decisions made by them. But that doesn't mean MARLS is right or the Board is right with different circumstances and situations. I think that the surveyors on the Board in the past years did basically have control of surveying related issues. They advise the rest of the Board on surveyor related topics, and followed that advice almost every time. MARLS is never going to agree with everything that happens with the Board. Every time that MARLS files a complaint and wants the Board to do something and the Board doesn't just snap to it do exactly what MARLS thinks is right, then MARLS gets all fired up and want to go to the Governor, change things, create own board, is not right. I think MARLS has had a lot of success working with the Board in recent years. He feels the Board does pay attention to the surveyors and the surveyors' interest. It sounds to me like the complaint-screening panel should reconsider this complaint. He felt the Board members do get the material in time to review. When you are appointed to the Board of PE & LS you make a commitment. If you can't make that commitment then you should step down. The Board doesn't have a lot of staff or money, information can't get out earlier than it is and they are doing the best they can do. The complaint screening panel doesn't change, but if one has a conflict they will step down and someone else is appointed to fill that spot. The same complaint-screening panel will review this again if it is re-filed. I think they should be given a chance to review it again.

Jim Hahn – read 37-67-332. Violations -- penalties -- enforcement. (1) (a) A person commits a criminal offense if the person knowingly:

- (i) practices or offers to practice engineering or land surveying in this state without being licensed under this chapter;
- (ii) presents or attempts to use the license or the seal of another person;
- (iii) gives false or forged evidence to the board or department in obtaining a license;
- (iv) impersonates another licensee;
- (v) attempts to use an expired, revoked, or emeritus license; or
- (vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall be fined an amount of not less than \$100 or more than \$500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid license.

(4) If a person violates an injunction against practice without a valid license, the court may impose a fine in an amount not to exceed \$25,000.

The Board of PE & LS provides online HOW TO FILE A COMPLAINT:

[http://www.discoveringmontana.com/dli/bsd/license/bsd\\_boards/complaints/complaint.asp](http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/complaints/complaint.asp)

The following is from this website:

**Dismiss without prejudice** - The complaint is dismissed but can be considered again if there is another complaint against the licensed individual of a similar nature.

The complaint and response go to the Screening Panel. This is not a hearing, but a committee meeting.

The Screening Panel has the option of dismissing the complaint, determining reasonable cause (see definitions) or requesting an **investigation** into the matter.

The complaint can be **dismissed with or without prejudice** (see definitions). The Panel may also decide to send a **letter of warning** or instruction to the respondent at the time the case is dismissed.

If an investigation is requested, the case will be assigned to an investigator who conducts an investigation under the direction of Department Counsel.

After completion of the investigation, an investigation report is written and reviewed by the Screening Panel. This report is not a public document.

Following the review of the written investigation report, the Screening Panel determines if the case should be dismissed or if there is **Reasonable Cause** to proceed with disciplinary action (see definitions). Again, this is not a hearing, but a committee meeting.

If the complaint is dismissed, it can be dismissed with or without prejudice (see definitions).

If Reasonable Cause is determined, Department Counsel sends a **Notice** to the Respondent. Once a Notice is issued, it becomes public information and is no longer confidential.

The Respondent has twenty (20) days in which to request a Hearing, a legal process before an impartial Hearing Examiner (similar to a judge) which is conducted pursuant to the [Montana Administrative Procedure Act](#).

If the Respondent does not respond within the 20 days, a Default order is requested by Department Counsel and the Adjudication Panel will issue a Final Order in the matter.

At any time, the Respondent and Department Counsel may work out a **Proposed Stipulation** to settle the case instead of proceeding with a Hearing (see definitions). A Proposed Stipulation goes to the Adjudication Panel for approval or rejection. If approved, a **Final Order** will be issued incorporating the terms of the proposed stipulation.

If a **Hearing** is conducted, the Hearing Examiner will issue findings of fact, conclusions of law and proposed order which will be considered by the Adjudication Panel for rejection, modification, or acceptance before issuing a final order.

**37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in [37-1-318](#), a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in [37-68-316](#) and [37-69-310](#), from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

DISCUSSIONS: A cease and desist was requested in the MARLS submitted complaint to the Board of PE & LS from President Block. Who was in charge of that complaint? Was there a contractual relationship between that company and people who supervised that work? Is it the proprietor? Wording is gray in the area of "in residence". Legislation is needed to rewrite to eliminate this problem so it can't be interpreted incorrectly. Exactly what does "in residence" mean? Debi stated that if you look under the State rules registering your firm, you have to be a sole proprietor, corporation; there are different legal terms for what a firm is that is registered with the State of Montana. If one of these people in that firm is not a licensed land surveyor within the state, then how can this law be interpreted any other way than there is a violation of this law?

**37-67-320. Sole proprietorships, firms, partnerships, and corporations -- requirements -- exceptions.** (1) A sole proprietorship, firm, partnership, or corporation:

(a) may engage in the practice of engineering in this state if the sole proprietor or any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the sole proprietorship, firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to sole proprietorships, firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others.

DEBRA ANDERSON MOVED TO RECIND THE FOLLOWING MOTION MADE AT THE DECEMBER 4, 2003 BOD MEETING: *“Warren Latvala moved President Block write a letter on behalf of MARLS to Governor Martz expressing absolutely no confidence in the Montana Board of Professional Engineers and Professional Land Surveyors; citing reasons why; voicing the Montana Association of Registered Land Surveyors discontent with MT Board of PE & PLS. Copies of this letter need to be sent to the Attorney General, MT Board of PE & PLS, and Department of Labor and Industry, and also suggest the general membership should be encouraged to contact the Governor and legislators about this issue.”* AND TO NOT WRITE THE LETTER AT THIS TIME AND TO TAKE A DIFFERENT COURSE, TO BE DISCUSSED; SECONDED BY TROY JENSEN; DISCUSSION; QCMC.

Warren hasn't changed his opinion at this time. Since he has represented MARLS as Board of Registration Committee Chair he felt no complaint filed by MARLS has been anything other than dismissed with or without prejudice. A gain was a MDOT complaint but it was filed by the Board of PE & LS. I have nothing but the highest respect for Dan McGee, Dick Ainsworth and Jim Hahn and the other people that have spoken here today. All that considered we have never been successful with a complaint with the Board, and that was the reasoning behind my motion. I don't think that the Governor is going to drop everything else and form a new Board of Professional Land Surveyors just because we have sent her a letter. I do think however that by sending the letter to the Governor and copying the Attorney General, the MT Board of PE & PLS that we will get the attention of that latter group and that we want them to look at the law. If we had not had an objection by an attorney on this last complaint, I think the quibbling over language if just another way to kill another complaint. Therefore, the only way we can get the Boards attention is coming down from the top, we have been trying from the bottom up for two or three year now and it has not worked. I still support the original motion but will defer to the wishes of the voting members of the BOD.

Tom Henesh recalled prior to Warren, Andy Stensrud was the MARLS Board of Registration Committee Chair and his comments and frustration with the Board. One of the biggest reasons he stepped down was because of this and would like the letter to be written. Debi stated the Board did take action on a filed complaint. Skip Bratton felt we should contact the Board and request a meeting with MARLS to discuss questions and displeasures of the Board. Contact the firm in question, contact the surveyors in question by letter that we don't agree with what he is doing, what can be done to correct this situation. If there is no response from this, then write the letter.

TOBY DUMONT MOVED TO REFILE THE UNLICENSED SURVEYOR COMPLAINT BASED ON COLLECTING ADDITIONAL EVIDENCE WITH THE MONTANA BOARD OF PE & LS; SECONDED BY TOM STARK; DISCUSSION; QCMC.

Complaint need to come from MARLS, needs to be more specific, investigate unlicensed surveying further; research and seek legal advice on re-filing the complaint and address at the Wednesday, February 25, 2004 BOD conference meeting.

It was moved and seconded to adjourn meeting at 8:32.  
Respectively submitted,

***Kay McDonald***

Administrative Secretary

*Sent to BOD and Committee Chairs for corrections January 17, 2004.  
Corrections notified to Kay by January 24, 2004.*

APPROVED BY:

\_\_\_\_\_  
James Burton  
MARLS SECRETARY/TREASURER

DATE: \_\_\_\_\_

**DECEMBER 4, 2003**  
**MARLS BOD MEETING MINUTES**  
**UNLICENSED SURVEYOR ISSUE**

**Unlicensed Surveyor update – President Block**

The Board of Professional Engineers and Land Surveyors met on November 13<sup>th</sup> to review the complaint MARLS submitted. The case was dismissed. The Board of PE & LS had a committee of three in a closed hearing. No comments were allowed. We were allowed to briefly discuss this with the BOD after the committee did their review but the decision was made and the BOD accepted it without all of them reviewing the complaint. I do not have a written response from them on the 8 items but their comments are listed below. Apparently they did have a response from the Plaintiff and the two surveyors defending themselves and we were not allowed to see that information.

**THE VIOLATIONS**

1. The Advertising of Land Surveying by an unlicensed practitioner has taken place in violation of 37-67-102(2)(a)(b)(c)
2. That offering to practice land surveying with out a licensee has taken place in violation of 37-67-301
3. That practicing land surveying with out a license has taken place in violation of 37-67-302
4. Sole proprietorships, firms, partnerships or corporations must have a professional land surveyor in residence who is in responsible charge. This individual does not and is in violation of 37-67-320
5. This individual is not operating under 37-67-103(3) where his work is done under the direct supervision of a person holding a license under state law.
6. That the guidelines for operating an office without a licensed land surveyor on staff are in violation.
7. That an unlicensed individual has solicited other Professional Land Surveyors to sign plats and surveys preformed by this individual.
8. Pursuant to 37-67-332 (1)(a)(I). A person has committed a criminal offence if the person knowingly practices or offers to practice land surveying in this state with out being licensed under state law.

It is unlawful for a person to practice or to offer to practice in this state land surveying or to use in connection with the persons name or otherwise assume, use, or advertise any title or description tending to convey the impression that the person is a professional land surveyor unless the person has been licensed under the provisions of state law. The practice of land surveying without a license is declared a public nuisance. We feel other licensed professional land surveyors are in violation of the rules of professional conduct adopted by the board. Whereas a conflict of interest results when a surveyor regularly employed in industry who accepts part time land surveying assignments without the agency's expressed permission and one who would sign maps, certificates of survey or plats without being in direct responsible charge.

The above violations had taken place and I am very displeased with the BOARDS findings. We will continue to monitor our profession and will continue to file complaints when the evidence is there to support our claims. Some day this will not be in vain. President Bryan

Warren stated after the decision he spoke with Todd Boucher and the committee just got a brief summary from Todd. He acknowledged that he forgot to mention that the one section he cited about having a Professional Land Surveyor on staff or in resident (37-67-320 B & C). Warren felt the Board members of the screening panel had not had time or taken time to review the complaint or read the statutes and see what the statutes said. They were trying to be responsible but didn't actually read the laws.

The MT Board of PE & LS did dismiss this without prejudice and that means the issue can be submitted again.

South Central Chapter reported that their chapter had a lengthy discussion of dissatisfaction with the Board of Professional Engineers and Land Surveyors (BPELS) and it revealed unanimous support for pursuing a separate board for Land Surveyors. To attain this goal will take much work by many individuals. There was also unanimous support for sending a letter voicing our discontent to the governor, with carbon copies to the Attorney General, the BPELS and the Department of Labor, as well as to key legislators. It was also suggested that the general membership should be encouraged to contact the governor and their legislators about this issue.

Dick Smith submitted the following is the Section of Rules, which Jim Hahn pointed out to him at the break during the BOR meeting concerning temporary practice of out-of-state licensees. 37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

Warren Latvala moved President Block write a letter on behalf of MARLS to Governor Martz expressing absolutely no confidence in the Montana Board of Professional Engineers and Professional Land Surveyors; citing reasons why; voicing the Montana Association of Registered Land Surveyors discontent with MT Board of PE & PLS. Copies of this letter need to be sent to the Attorney General, MT Board of PE & PLS, and Department of Labor and Industry, and also suggest the general membership should be encouraged to contact the Governor and legislators about this issue. Seconded by Tom Henesh; discussion; **Roll call vote result was unanimous expressing the will of the Board of Directors of MARLS; QCMC.**