

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA BOARD OF PROFESSIONAL  
ENGINEERS,

Petitioner,

vs.

Case No. 17-3840PL

EARL E. HENRY, P.E.,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On October 26, 2017, this case came before Administrative Law Judge Hetal Desai for final hearing in Tallahassee, Florida.

APPEARANCES

For Petitioner: John Jefferson Rimes III, Esquire  
Florida Engineers Management Corporation  
2639 North Monroe Street, Suite B-112  
Tallahassee, Florida 32303-5268

For Respondent: Earl E. Henry, P.E., pro se  
6880 52nd Street North  
Pinellas Park, Florida 33781

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent was negligent in the practice of engineering in violation of section 471.033(1)(g), Florida Statutes (2014),<sup>1/</sup> as alleged in the Administrative Complaint; and, if so, what sanction should be imposed.

PRELIMINARY STATEMENT

On May 19, 2017, the Florida Engineers Management Corporation ("FEMC") filed a four-count Administrative Complaint on behalf of the Florida Board of Professional Engineers ("Petitioner" or "Board") against Earl D. Henry, P.E. ("Respondent" or "Mr. Henry"), alleging he was negligent in the practice of engineering by drafting and submitting engineering documents that were not in compliance with the Responsibility Rules of Professional Engineers ("Responsibility Rules" or "rules") found in Florida Administrative Code Chapters 61G15-30 to 61G15-36 or with acceptable engineering principles.

- Count I - Electrical Design Documents
- Count II - Mechanical (HVAC) Design Documents
- Count III - Mechanical Design Documents
- Count IV - Structural Engineering Documents

On June 7, Mr. Henry disputed the allegations and requested a hearing pursuant to section 120.57(1), Florida Statutes (2017). The Board referred the Administrative Complaint to the Division of Administrative Hearings ("DOAH") for assignment of an administrative law judge ("ALJ").

On September 21, Petitioner filed a Notice of Dismissal of Certain Allegations in the Administrative Complaint withdrawing Count II.

The final hearing was held on October 26 in Tallahassee, Florida. Petitioner offered the testimony of the following:

(1) Homer A. Ooten, P.E., LEED-AP, an expert in electrical and mechanical engineering; and

(2) Roger L. Jeffery, P.E., LEED-AP, an expert in structural engineering.

Mr. Henry testified on his own behalf. Petitioner offered seven exhibits: Petitioner's Exhibits 1 through 3 and 5 through 8.

Mr. Henry offered no exhibits, but had a number of demonstrative exhibits which were larger copies of Petitioner's Exhibits 6 through 8 (engineering plans and documents).

The ALJ took notice of various provisions of the Florida Statutes, the Florida Administrative Code, and the 2010 Florida Building Code ("FBC").<sup>2/</sup>

The Transcript was filed on November 22. Both parties timely filed proposed recommended orders, which have been considered.

#### FINDINGS OF FACT

The following findings of fact are based on the testimony presented at the final hearing, exhibits accepted into evidence, and matters subject to official recognition.

1. The Board is the state entity charged with regulating the practice of engineering, pursuant to chapter 455, Florida Statutes.

2. FEMC provides administrative, investigative, and prosecutorial services to the Board pursuant to section 471.038, Florida Statutes.

3. Mr. Henry obtained his professional engineering license from the state of Florida in 1992 and has been a licensed engineer for all times relevant to the issues in this case. His license number is PE 45894.

4. In May 2014, Mr. Henry provided an estimate for engineering services to the owners of Darr Salaam Annex ("property owners"), a religious/community center in Thonotosassa, Florida. The services involved the renovation of an existing one-story building ("Project").

5. Initially the property owners hired another engineer who submitted the renovation plans to the appropriate agencies for a building permit: the Hillsborough County building plans review staff ("County") and the Hillsborough County Fire Marshals' Office ("FMO").

6. The County rejected the first submittal of the electrical and mechanical plans on June 26 and July 3, 2014; FMO rejected the submitted plans on June 27, 2014.

7. The property owners retained Respondent to be the engineer of record ("EOR") for the Project in August 2014.

8. As the EOR, Respondent prepared, signed, sealed and submitted documentation to the County and FMO for the Project

numerous times. The following is a summary of his submissions and the permitting entities' responses.

Date of Review Comments	Status of Submitted Plan
October 3, 2014	First resubmittal denied by FMO; second resubmittal required.
October 20, 2014	Corrected electrical plan review denied by County.
October 30, 2014	Building plan review denied by County.
December 21, 2014	Corrected electrical plan review denied by County.
December 22, 2014	Building plan review denied by County.
January 2, 2015	Second resubmittal denied by FMO; resubmittal required.
February 6, 2015	Third resubmittal denied by FMO.
February 18, 2015	Corrected electrical plan approved by County.
February 20, 2015	Building plans review denied by County.
February 25, 2015	Corrected building plan approved by County.
March 2, 2015	Corrected mechanical plan approved by County.
March 13, 2015	Fourth resubmittal denied by FMO.
March 16, 2015	Building plan approval rescinded by County.

9. The parties presented no evidence as to whether the County and FMO ultimately approved the building plans or issued a building permit.

10. The last plans Mr. Henry prepared and submitted to the County and FMO consisted of five illustrations including:

(1) a demolition plan; (2) a lighting/safety plan; (3) wall details; (4) canopy details (structural plan); and (5) elevation drawings.

11. The demolition plan contains a section titled "SCOPE OF WORK," which states:

THE THREE DECORATIVE CANOPIES ARE TO BE  
CONSTRUCTED AS PER THESE PLANS

THE EXISTING 1<sup>ST</sup> FLOOR INTERIORS TO BE  
RENOVATED AS PER THESE PLANS

THE RENOVATED BATHROOMS ARE TO BE WIRED

ALL OTHER EXISTING LIGHTING TO BE RETAINED

OUTLETS ON THE WALL REMOVED ARE [TO] BE  
DISCARDED

THE EXISTING AC SYSTEMS ARE TO BE RETAINED[.]

12. On March 20, 2015, Kevin McGuire, the Plans Reviewer for the FMO filed a complaint with the Board ("McGuire Complaint") regarding Respondent. Mr. McGuire claimed Mr. Henry had been repeatedly told the plans were deficient and also been told how to correct them, but that Petitioner failed to address the issues raised by the FMO in the revised submittals.

Mr. McGuire also stated in his Complaint that--in his opinion-- Mr. Henry lacked basic knowledge of the Florida Building Code and the Fire Prevention Code.

13. Petitioner notified Respondent of the allegations in the McGuire Complaint. Mr. Henry responded he was not responsible for the electrical, mechanical and structural plans and that the Project was not a "straight forward situation."

14. After receipt of the McGuire Complaint and Mr. Henry's response, the Board's Probable Cause Panel authorized FEMC to initiate an investigation. These documents, as well as the final building plans submitted to the County and FMO, were provided to four FEMC consultants for review:

- (1) Mr. Ooten (electrical and mechanical elements);
- (2) Gerald Zadikoff, P.E. (structural elements);
- (3) Mr. Jeffery (second review of the structural elements);

and

(4) Sarah Maman, P.E. (fire safety and protection elements).<sup>3/</sup>

15. Based on the engineering reports prepared by these consultants, the Board filed the Administrative Complaint against Mr. Henry alleging deficiencies in the electrical, mechanical and structural design documents.

### Overall Violations

16. As an initial matter, most of Mr. Henry's violations (described in detail below) arise out his lack of description and specificity in the engineering documents. The overwhelming evidence establishes most of the deficiencies alleged by Petitioner could have been avoided had Mr. Henry simply provided the details required by the rules to (1) describe the specifications of the new electrical, plumbing and structural features; and (2) distinguish the existing systems more clearly from those that were being affected by the renovations. Respondent's failure, if not refusal, to do so was one of the reasons the plans were repeatedly rejected by the County and FMO.

17. In general, Mr. Henry accepted responsibility at the hearing for the Project plans, but he maintained that any departures from the FBC or rules were justified by the specific circumstances of the project in question and his sound professional judgment. He did not, however, establish what those specific or special circumstances were. Both experts' testimony and reports established that departures from the rules, even if they are justified by circumstances and the professional judgment of the engineer--which these were not--must be documented. Again, Mr. Henry's lack of attention to detail in the documents was his downfall; it cannot be excused by any specific circumstance or his professional judgment.



18. Respondent also claimed he was not responsible for describing the existing elements that he did not design. Again, it is difficult to discern from the documents alone what was in place before the renovation and what would be affected by the renovation. Mr. Henry admitted, "I don't have a list of move this bathroom or move this outlet or move this here." Mr. Henry could have used different colors or methods to distinguish the changes from the original structure, but he did not.

19. None of the Project documents cite to the relevant codes, rules, or ordinances that Respondent relied upon as required by rule 61G15-30.003(1)(b). The plans simply state they comply with the FBC without noting which version or year Respondent was using. Mr. Henry believed that his general citation to the FBC put the plan reviewers and contractors on notice of all of the construction code requirements. This assertion is rejected based on the testimony of Mr. Ooten and Mr. Jeffery, which established: it is common practice in the profession to make specific citations; and plan reviewers and contractors have difficulty in evaluating and interpreting building plans without citations to specific statutes, codes, and rules.

20. Similarly, Mr. Henry testified he did not have to provide the sizing and specifications of construction materials in writing because they were known by the contractor he was

working with at the time. This contention is rejected based on Mr. Henry's own testimony that others may need this information to complete the project, and his own admission there was no guarantee that the specific contractor he was working with would complete the Project.

#### Electrical Violations

21. The Board alleges the electrical "Legend" section lacked sufficient symbols or explanations as required by rule 61G15-33.004. The small copies of the drawings presented by the Board were difficult, if not impossible, to read. At the hearing, however, Respondent brought actual-size copies of the drawings he had submitted to the County and FMO and was able to show that although some information was missing from the "Legend" section, this information was located elsewhere in the documents. As such, the "Legend" is compliant and does not violate the Responsibility Rules.

22. The Board, however, provided clear and convincing evidence, primarily through the testimony and report of Mr. Ooten, that the electrical engineering drawings Mr. Henry prepared were deficient.

(a) The drawings contain an Electrical Riser Diagram, but no short circuit values and no voltage drop calculations for the feeders, as required by of rule 61G15-33.003(2) (a) and (f).

(b) The drawings do not depict any surge protective devices nor do they explain why such devices were not necessary, as is required by rule 61G15-33.003(2) (d).

(c) The drawings do not specify the type of conductor insulation that is necessary or should be used, as required by rule 61G15-33.003(2) (b).

(d) The drawings contain incomplete circuitry of electrical outlets, equipment and devices such as air handlers, water heaters, lighting fixtures and receptacles, and ground fault circuit interrupter receptacle, as required by rule 61G15-33.003(2) (g).

(e) The grounding conductors reflected in the drawings are inadequate and insufficient to satisfy the requirements of rule 61G15-33.003(2) (i).

23. The electrical information omitted by Respondent is necessary to assure the circuit breakers, wires, conductors and other electrical components are adequate for the power usage, because undersized components can overheat and cause fires. Likewise, the grounding information is necessary to ensure the building is safe in the event of lightning or an electrical power surge.

#### Lighting Violations

24. The Board also provided clear and convincing evidence that the lighting plan Mr. Henry prepared was deficient.

(a) The drawings lack any light fixture specifications, as required by rule 61G15-33.004(2)(a).

(b) The drawings fail to provide for an appropriate number of exit lights, in violation of the Florida Fire Prevention Code and rule 61G15-33.004(2)(b).

(c) The drawings show no circuiting for any lighting fixtures, no calculated values for energy usage, and do not establish that the lighting plan complies with the Florida Energy Code for Building Construction, as required by rule 61G15-33.004(2)(d) and (e).

25. Mr. Henry claimed he was not required to make these notations because the renovation incorporated the existing lighting. Mr. Henry admitted, however, he could have labeled the existing lighting fixtures that were not going to be modified as "N/A" or "existing," but did not think he needed to do so because "the contractor understands this." Unfortunately, what was existing lighting and what was being changed was not apparent to the plan reviewers, Mr. Ooten, or the ALJ.

#### Plumbing Violations

26. The Board alleged numerous deficiencies in the plumbing plan, including that the potable water diagram shown on Sheet 3 of the drawings lacked designation of the total water fixture units, as required by rule 61G15-34.007(2)(c). Mr. Henry, however, clarified at the hearing that this information was

contained in the documents, but not on the sheet related to plumbing. As such, the Board did not show the water diagram was insufficient.

27. The Board, however, did present sufficient evidence to establish Mr. Henry's plumbing drawings lack necessary data or provide incorrect information in violation of the FBC and applicable Responsibility Rules as follows:

(a) The drawings fail to designate fixture requirements, back flow prevention devices, water supply line locations or hot or cold water line locations other than sewage, as required by the FBC.

(b) The drawings lack plumbing equipment descriptions, or material specifications (i.e. sizes and strengths of the materials to be used), as required by rule 61G15-34.007(2)(a), (l), and (m).

(c) The drawings lack designation of storm riser and area drainage calculations, as required by rule 61G15-34.007(2)(e).

(d) The drawings lack piping layouts, as required by rule 61G15-34.007(2)(f).

(e) The drawings fail to list the applicable plumbing codes, design standards or requirements, as required by rule 61G15-34.007(2)(i).

28. These omissions could result in inadequate water and sewer capabilities. The lack of drainage calculations make it

difficult to assess the impact the renovations will have on the existing storm water runoff system.

29. Again, Mr. Henry denied he was responsible for making these designations because the renovations, he claims, did not affect the existing plumbing. The testimony of Mr. Ooten, however, established: the additional bathroom features would affect the total plumbing system, and Mr. Henry should have better designated what portions would not be affected by the renovations.

30. The Board also established that the Project plans fail to designate a handicap accessible bathroom stall as required by rule 61G15-34.007(2)(j). Although at the hearing, Mr. Henry showed a larger space where these bathrooms were located on the plans, they were not clearly marked as "handicap" stalls. Mr. Henry admitted as much and noted, "I could have also put a note in the [the plans that] this was a handicap bathroom, okay, but the dimensions speak for themselves. . . . I did not put a detail for the handicap bathroom. My mistake. All right. Everybody makes mistakes."

#### Structural Violations

31. The Project renovations included widening the building's doorways and adding canopies to the rooftop. These are changes affecting the structural elements of the building.

32. Based on Mr. Jeffery's testimony and report, the Board presented clear and convincing evidence that Respondent's structural engineering design documents were professionally and legally deficient.

(a) The structural plans fail to provide the live or dead loads for the roof, as required by the FBC and rule 61G15-31.002(5). Although Mr. Henry testified these were not necessary because no changes were made to the roof, the plans reflect there was an addition of three decorative canopies. The structural plans do not indicate that the live or dead loads remain unchanged despite these additions. To the contrary, Mr. Jeffery's testimony and report established that the canopies (even if decorative) coupled with the changes in doorways would affect the structural loads. Thus, the structural plans were noncompliant.

(b) There are no structural notes indicating applicable code or strength of materials for masonry, grout, reinforcing steel and wood, as required by rule 61G15-31.003(1)(a). Mr. Henry claimed that providing the size of the structure beams was enough to satisfy the rule. This contention is rejected based on Mr. Jeffery's testimony:

[Mr. Henry]: I have here a 2-by-6 ridge beam. A 2-by-6 ridge beam . . . is established what load a 2 by 6 ridge bema from the American Wood Council. The American Wood Council has a sort of table that I use.

I don't put in in every plan because I establish my own table based on information from the American Wood Council. A 2-by-6 ridge—yes [?]

[Mr. Jeffery]: First of all, you haven't even said what species of wood it is, so each species of wood has a different strength. Secondly, with any species, there's at least five or six different grades, and each of those grades has a different strength.

So you've got maybe 10 to 15 options that could be picked from by the contractor, and you've not told him which one to pick.

(c) The wind loads indicated on the diagrams are inadequate in that they do not reflect the new canopies and do not establish that the structure could withstand or resist the minimum wind speed. Although the testimony conflicted about whether the 2005 or 2010 standards were applicable, Mr. Jeffery provided sufficient testimony to establish that the calculations on the plan that showed the canopy details were insufficient under either standard.

33. Although knowledgeable about designing the renovations, Mr. Henry failed to utilize due care in performing as the EOR and failed to have due regard for acceptable standards of engineering principles in the preparation and submission of the engineering documents he signed and sealed for the Project.

34. It was clearly and convincingly shown that Mr. Henry was negligent in the preparation and submission of the building plans for the Project.



35. There is nothing in the record to indicate Respondent has a history of discipline or has had any other complaints filed against him in his 25 years as a licensed professional engineer in Florida.

36. The Project was a renovation of an existing building with no major changes.

37. There was no evidence the Board interviewed the property owners or Project contractor, nor was there evidence of any actual damages suffered by the public as a result of Mr. Henry's negligence.

#### CONCLUSIONS OF LAW

38. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding under sections 120.569 and 120.57(1), Florida Statutes (2016).

39. As a professional engineer, Respondent is subject to and must comply with the Responsibility Rules found in chapters 61G15-30 to 61G15-36.

40. The Board seeks to take disciplinary action against Respondent's engineering license. A proceeding to impose discipline against a professional license is punitive in nature, and Petitioner bears the burden to prove the allegations against Respondent in the Administrative Complaint by clear and convincing evidence. See Fla. Dep't of Child. & Fams. v. Davis

Fam. Day Care Home, 160 So. 3d 854, 856 (Fla. 2015) (“[A]n agency must prove its reasons for revoking a professional license by clear and convincing evidence because such a proceeding is penal in nature and implicates significant property rights.”).

41. Clear and convincing evidence is defined as an intermediate burden of proof that:

[R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872 (Fla. 2014) (citations omitted).

42. Section 471.033(1)(g) provides “[e]ngaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering” is a ground for disciplinary action.

43. Section 471.033(2) authorizes and requires the Board to specify, by rule, what acts or omissions constitute negligence in the practice of engineering. Rule 61G15-19.001(4) further provides:

A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional

engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

44. Rule 61G15-30.002(1) defines the "Engineer of Record" as a Florida professional engineer who is responsible for the preparation, signing, dating, sealing and issuing of any engineering document for any engineering service or creative work. Mr. Henry was the EOR for the Project.

45. Rule 61G15-30.002(4) defines "engineering documents" to be designs, plans, specifications, drawings, prints, reports, or similar instruments of service in connection with engineering services or creative work that have been prepared and issued by the professional engineer or under his responsible supervision, direction or control. Although there was a difference of opinion between the parties about whether the submissions by Respondent to the County and FMO were "drawings" or "plans," these documents

were "engineering documents" as defined by the Responsibility Rules.

46. Rule 61G15-30.002(6) provides that an engineering document is "filed for public record" when the document is presented, with the EOR's knowledge and consent, to any governmental agency in connection with the transaction of official business with that agency. Mr. Henry's submission (and resubmissions with corrections) of the plans to obtain a building permit were "filed for public record" as defined by the Responsibility Rules.

47. Rule 61G15-30.002(7) provides that documents filed for public record with the Authority Having Jurisdiction (AHJ) to determine compliance with codes and standards and to be used for execution of the Project are required to be signed and sealed. In this case, the County and FMO were the AHJ.

48. Rule 61G15-30.003 provides the minimum requirements for engineering documents, and states in part:

(1) Engineering Documents are prepared in the course of performing engineering services. When prepared for inclusion with an application for a general building permit, the Documents shall meet all Engineer's Responsibility Rules, set forth in Chapters 61G15-31, 61G15-32, 61G15-33, and 61G15-34, F.A.C., and be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the Florida Building Code, adopted in

Section 553.73, F.S., and applicable laws, ordinances, rules and regulations, as determined by the AHJ. The Documents shall:

\* \* \*

(b) List Federal, State, Municipal, and County standards, codes, ordinances, laws, and rules, with their effective dates, that the Engineering Documents are intended to conform to.

\* \* \*

(e) Identify clearly elements of the design that vary from the governing standards and depict/identify the alternate method used to ensure compliance with the stated purpose of these Responsibility Rules.

\* \* \*

(3) When elements of the project are shown on an engineering document only for information or clarification and the Engineer does not intend to accept responsibility for the elements, the engineer shall clearly note on the documents the extent of his responsibility.

49. Respondent's single reference to the FBC was insufficient to comply with the requirement that Respondent list all of the federal, state, municipal and county standards along with their effective dates. Such lack of required information prepared by a professional engineer can constitute negligence when, as here, the deficiencies are significant. See gen., Dep't. of Prof'l Reg. Bd. of Prof'l Eng'rs v. John Holt, P. E., Case No. 15-6468PL, RO at 45 and 54 (Fla. DOAH March 16, 2016)

(finding omission of required specifications was negligence), approved and incorporated, FEMC Case No: 2014050099 (Fla. DBPR May 3, 2016). The evidence is clear and convincing Mr. Henry omitted the necessary information.

50. Per rule 61G15-30.003(3), Petitioner was required to designate on the plans what aspects he did not intend to take responsibility for. He did not make this showing. If Respondent wished to limit the scope of his professional responsibility, it was incumbent upon him to make clear what features existed before the renovation and what was affected by the renovation. Petitioner clearly and convincingly showed that by refusing to clarify the drawings and comply with the common practice used by professional engineers, Respondent failed to utilize due care. As a result, Respondent's signed and sealed engineering documents fail to meet acceptable engineering standards. Id. at 54 (rejecting professional engineer's argument that he was only responsible for one element of engineering documents even though he signed and sealed all the documents).

Count I (Electrical Design Documents)

51. Petitioner alleges that Respondent was negligent by signing and sealing materially deficient electrical engineering plans.

52. Rule 61G15-33.003 (Design of Power Systems) provides:

(1) Power systems convey or distribute electrical energy. Items to be included in the design and analysis of these systems are: steady state and transient loads, short circuit analysis and protection (design and analysis), load flow, voltage drop, harmonics and protective device coordination.

(2) Electrical Engineering Documents applicable to power systems shall at a minimum indicate the following:

(a) Power Distribution Riser Diagram with short circuit values.

(b) Conductor Ampacities (sizes) and insulation type.

(c) Circuit interrupting devices and fault current interrupting capability.

(d) Location and characteristics of surge protective devices.

(e) Main and distribution equipment, control devices, locations and sizes.

(f) Voltage drop calculations for the feeders and customer-owned service conductors are required. Additionally, the documents shall state the reasons why the two percent limit for feeders and customer-owned service conductors are not being met, if applicable.

(g) Circuitry of all outlets, equipment and devices.

(h) Load computations.

(i) Electrical legends.

(j) Grounding and bonding.

(k) Instrumentation and control where required.

(l) Record documents applicable to power systems shall, at a minimum, contain information as required by Florida Building Code.

(m) Installation and testing requirements of required emergency and standby power systems.

53. Rule 61G15-33.004 (Design of Lighting Systems) provides in relevant part:

(2) Electrical Engineering documents for lighting systems shall, at a minimum, indicate the following:

(a) Lighting fixture performance specifications and arrangements.

(b) Emergency lighting, egress and exit lighting.

(c) Exit Lighting.

(d) Lighting control and circuiting.

(e) Calculated values to demonstrate compliance with the Florida Energy Code for Building Construction.

54. In support of Count I, as noted in the findings of fact, Petitioner showed numerous deviations and departures from the requirements of the rules governing electrical engineering documents. These deviations or departures were not justified by the specific circumstances of the Project and sound professional engineering judgment.

55. Petitioner clearly and convincingly showed Respondent failed to utilize due care and that he signed and sealed



electrical engineering documents that did not conform to acceptable engineering standards.

56. Petitioner proved by clear and convincing evidence Respondent engaged in negligence in the practice of engineering in signing and sealing materially deficient electrical engineering documents. See § 471.033(1)(g), Fla. Stat.; and Fla. Admin. Code R. 61G15-19.001(4).

Count III (Plumbing Design Documents)

57. Petitioner alleges Respondent was negligent by signing and sealing materially deficient plumbing engineering plans for the Project.

58. Rule 61G15-34.007 (Design of Plumbing Systems) provides in relevant part:

(2) Mechanical Engineering Documents applicable to Plumbing Systems shall when applicable, include but are not limited to the following:

(a) Equipment schedules for all plumbing fixtures, water heaters, boilers, pumps, grease traps, septic tanks, storage tanks, expansion tanks, compression tanks and roof and floor drains.

(b) Floor plans, site plans, and building and plumbing system elevations are appropriate.

(c) Potable Water isometric diagrams with pipe sizes and total water fixture units.

(d) Sanitary riser diagrams with pipe sizes and total sanitary waste fixture units.

- (e) Storm riser diagrams with pipe sizes and cumulative drain area square footages.
- (f) Cold water, hot water, sanitary, and storm drainage piping layouts.
- (g) System isometrics and flow diagrams of other fluids and gases.
- (h) Design data for septic tank, grease trap(s), drain field sizing, when applicable.
- (i) List of ASHRAE, ASME, ASPE, ANSI and other applicable codes, design standards and requirements.
- (j) Design shall be in accordance with handicap requirements adopted by the authority having jurisdiction.
- (k) Instrumentation and Control Diagrams and sequence of operation.
- (l) All plumbing fixtures, valves, pumps, tanks, accessories, specialties, enclosures, and such equipment shall be described and located on the drawings.
- (m) Materials for all plumbing systems shall be specified.

59. In support of Count III, as reflected in the findings of fact, Petitioner showed several deviations and departures from the requirements of the Responsibility Rules governing plumbing engineering documents. These deviations or departures were not justified by the specific circumstances of the Project and sound professional engineering judgment.

60. Petitioner clearly and convincingly showed Respondent failed to utilize due care, and he signed and sealed plumbing documents that did not conform to acceptable standards.

61. Petitioner proved by clear and convincing evidence Respondent engaged in negligence in the practice of engineering in signing and sealing materially deficient plumbing engineering documents. See § 471.033(1)(g), Fla. Stat.; and Fla. Admin. Code R. 61G15-19.001(4).

Count IV (Structural Engineering Documents)

62. Petitioner alleges Respondent was negligent by signing and sealing materially deficient structural engineering plans for the Project.

63. Rule 61G15-31.002 (Design of Structures - Definitions) provides, in relevant part:

(5) Structural Engineering Documents. The structural drawings, specifications and other documents setting forth the overall design and requirements for the construction, alteration, repair, removal, demolition, arrangement and/or use of the structure, prepared by and signed and sealed by the engineer of record for the structure. Structural engineering documents shall identify the project and specify design criteria both for the overall structure and for structural components and structural systems. The drawings shall identify the nature, magnitude and location of all design loads to be imposed on the structure. The structural engineering documents shall provide construction requirements to indicate the nature and

character of the work and to describe, detail, label and define the structure's components, systems, materials, assemblies, and equipment.

64. In support of Count IV, as reflected in the findings of fact, Petitioner showed deviations and departures from the requirements of the rules governing structural engineering documents. These deviations or departures were not justified by the specific circumstances of the Project and sound professional engineering judgment.

65. Petitioner clearly and convincingly showed Respondent failed to utilize due care, and he signed and sealed structural engineering documents that did not conform to acceptable engineering standards.

66. Petitioner proved by clear and convincing evidence Respondent engaged in negligence in the practice of engineering in signing and sealing materially deficient structural engineering documents. See § 471.033(1)(g), Fla. Stat.; and Fla. Admin. Code R. 61G15-19.001(4).

#### Penalty

67. Section 455.227(2), Florida Statutes, allows the Board to impose various penalties for violation of the Responsibility Rules and professional negligence, including:

When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a

substantial violation of subsection (1). . . , it may enter an order imposing one or more of the following penalties::

\* \* \*

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

68. Rule 61G15-19.004(2)(g)2.a. provides for a first-time violation of the rules constituting negligence, the penalty shall range from two years of probation and a \$1,000.00 fine to a \$5,000.00 fine and revocation of license.

69. Mitigating circumstances are set forth in rule 61G15-19.004 (Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances), which provides in part:

(3) The board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing

evidence presented to the board prior to the imposition of a final penalty. The fact that a Hearing Officer of the Division of Administrative Hearings may or may not have been aware of the below mentioned aggravating or mitigating circumstances prior to a recommendation of penalty in a Recommended Order shall not obviate the duty of the board to consider aggravating and mitigating circumstances brought to its attention prior to the issuance of a Final Order.

\* \* \*

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

1. In cases of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the licensee's misfeasance.
2. Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices his profession.
3. Restitution of any damages suffered by the licensee's client.
4. The licensee's professional standing among his peers including continuing education.
5. Steps taken by the licensee or his firm to insure the non-occurrence of similar violations in the future.

70. The following are relevant mitigating factors:

- (1) Mr. Henry took over the Project after the original EOR's initial plans had been rejected by the County and FMO;
- (2) there

was no evidence Respondent has previous disciplinary history;  
(3) the Project did not involve major changes to the existing building; and (4) there was no testimony that the property owners had complaints regarding Mr. Henry's services or that the public suffered any damages based on Mr. Henry's negligence. Pursuant to the circumstances delineated in the rule under rule 61G15-19.004(3)(b)1., 2. and 3., a downward deviation from the range of penalties in the guidelines is warranted.

71. Section 455.227(3) allows FEMC to assess costs related to the investigation and prosecution of the case, excluding costs associated with an attorney's time. Although these costs are appropriately taxed because the investigation was necessary to verify the McGuire Complaint and prosecute Respondent, the consultation and report of FEMC Consultant Gerald Zadikoff, P.E., is duplicative of Mr. Jeffery's report. Thus, an award of the investigative costs less the amount paid to Mr. Zadikoff is appropriate and warranted.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Florida Board of Professional Engineers:

1. Finding Earl E. Henry engaged in negligence in the practice of engineering, in violation of section 471.033(1)(g),

Florida Statutes, and Florida Administrative Code Rule 61G15-19.001(4);

2. Imposing a two-year probation; and

3. Awarding costs related to the investigation and prosecution of this case as described in this Recommended Order.

DONE AND ENTERED this 9th day of January, 2018, in Tallahassee, Leon County, Florida.



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HETAL DESAI  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of January, 2018.

ENDNOTES

<sup>1/</sup> Except as otherwise indicated, references to all other statutes and administrative rules are to the versions in effect at the time the final engineering documents were signed and sealed in February and March 2015.

<sup>2/</sup> The parties applied the 2010 Florida Building Code to the plans at issue in this case.

<sup>3/</sup> Although FEMC obtained written opinions from other consultants as part of its investigation, only the testimony and reports of Mr. Ooten and Mr. Jeffery were considered in reaching the factual findings. Mr. Henry did not dispute the opinions of Mr. Ooten



and Mr. Jeffery; in fact, he admired them. He described Mr. Ooten as "100% correct" as to his knowledge of the applicable statutes, code requirements and professional engineering rules.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.