



**By Joel Leininger, LS**

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## On Competence and Enforcement

**W**e conclude our discussion from the last two issues concerning the state of retrace-ment competence across the country and the proposal to remedy the same by enacting detailed specifications for boundary surveys.

In all jurisdictions, candidates for licensure must submit statements from licensed surveyors attesting to their qualifications. Since Boards have almost no contact with the individual prior to the evaluation

process, it follows that that process would be enhanced by endorsements from those in the surveying community with whom the would-be surveyor has been associated. Unfortunately,

other considerations factor into the decision whether to endorse or not, the end result of which is that surveyors recommend people who are unqualified. One surveyor wrote in supporting a candidate by saying he didn't know the young man personally, but if he were anything like the young man's father, he'd be a fine surveyor. Hmmm. At least he was honest. Then came the surveyor who gave power of attorney to his office manager to sign and seal plats and other documents on his behalf while he was ill (oops!), and so she signed and sealed, among other things, a license application for someone in the firm and *forwarded it to the Board*. That office exhibited elevated levels of stupidity. Far more common is the attitude at firms where everyone does what he can to ensure that the

applicant's package is as impressive as the firm can make it—even if it means attributing somewhat more experience to the applicant than is deserved.

Apparently the endorsement idea is not without its shortcomings. But it remains, warts and all, a Board's most comprehensive glimpse into the character and experience of the prospect. No test can duplicate it. The surveying community does not understand its critical importance in the licensing process, however, and we all reap the "benefits."

**Where judgment is central to the activity, widespread policing of that activity is a chimera.**

### Meaningful Enforcement

One of the things that irks surveyors across the country is the apparent impotence of Boards in tightening up sloppy practice. Some of that frustration is warranted, but some is misplaced. What follows is not presumed to be the case at every board in the country, but is (I suspect) the situation in more than a few.

First, Boards lack jurisdiction over the subject matter involved. Historically, Boards have had jurisdiction over shoddy surveyors—not shoddy surveys. This is an important distinction. I know there are codified standards of practice in many states, but their enforcement is of secondary importance; primarily Boards are charged with ensuring that licensed

surveyors are able to provide the public with adequate surveys. Codified standards are a relative newcomer to the Boards' fare, and I maintain that if pre-licensure vetting were more effective, they would be unnecessary. Of course, as noted above, many times the vetting is not effective.

Second, Boards are somewhat at the mercy of the staff and attorneys who manage the day-to-day activities (Board members *are* part-time participants, remember). Board attorneys who have heavy caseloads and who do not under-

stand technical matters are not eager, as a rule, to delve into arcane procedures and standards to build and then prosecute a case. Let's face it: some of the things we know are out of line would not offend laymen. I heard this on a couple

of occasions: "Who died as a result of this survey?" That's a pretty high standard to meet (not that it's an appropriate one). If the bar is maintained at that height, few complaints will pass muster.

### What, Me Worry?

But what can we expect from an enforcement action? For the most part, only black and white issues are enforceable. (Ever wonder why surveying standards look like drafting specifications? It's because checklists make it easy to evaluate compliance.) The most serious breaches of doctrine will elude prosecution. How will anyone be able to enforce "looking hard enough for that called-for monument"? Sure, another surveyor might find it when conducting

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## Point to Point


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a survey for the adjoiner, but that might be five or ten (or thirty) years later. What then, five demerits for the first surveyor?

There can be no meaningful enforcement of judgment-based decisions—at least not on a scale large enough to make a difference. That is why it is essential to have only competent surveyors licensed in the first place. The crux of the matter is, where judgment is central to the activity, widespread policing of that activity is a chimera. Forensic analysis of the work, often years later, is impossible to conduct in volume. Additional regulations attempting to codify judgment, therefore, are worse than nothing. They hamper the good guys, and the bad guys don't voluntarily pay attention to regulations anyway.

Those who would argue otherwise miss the point.

So where does all this leave us? Ultimately, the responsibility for ensuring an appropriate standard of care lies with every one of us. It begins with dialogue—not mere whining, but real discourse over the theory and execution of retracement; it continues with research, into both the practices of former surveyors and the rules for interpreting evidence. This last point, I believe, is especially important, for it lies at the center of the problem. Continuing education also plays a role here, not because of changes in the marketplace, but because it is likely *none of us* knew as much as he or she should have when initially licensed. Finally, we must not shy away from insisting on competence at the time of initial licensure, whether that be through formal mentoring programs, reinventing the four-year programs into something usable, or lobbying NCEES (the author and keeper of the national examinations) to refocus its agenda, and thus the tests, on our central activities. Or all of the above. I doubt whether any other crusade could provide a more beneficial contribution to society.

Because when incompetent surveyors get licensed, we all pay for it. 

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