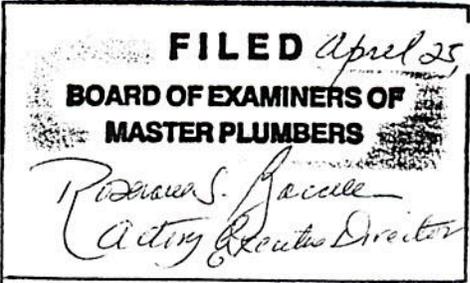


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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF EXAMINERS OF MASTER PLUMBERS

IN THE MATTER OF  
  
JAMES P. KYNE, L.M.P.  
LMP# 36BI00461600  
  
LICENSED TO PRACTICE AS A  
MASTER PLUMBER IN  
THE STATE OF NEW JERSEY

Administrative Action  
  
FINAL ORDER  
OF DISCIPLINE

This matter was opened to the New Jersey State Board of Examiners of Master Plumbers ("the Board") upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. James P. Kyne ("respondent") is a licensed master plumber in the State of New Jersey and has been a licensee at all times relevant hereto. Respondent is the bona fide representative for "James P. Kyne Plumbing and Heating Company" and has been the bona fide representative at all times relevant hereto.
2. The Board received a complaint filed by consumer M.N. The complaint alleged that respondent and M.N. entered into a verbal agreement on July 21, 2010 for respondent to look at a water leak at M.N.'s home. Respondent and M.N. both dug in M.N.'s front yard to find the leak, but were unable to find it. The complaint further alleged that respondent and his son, Eugene Kyne, returned to finish the job the next day. According to M.N., respondent's work resulted in part of M.N.'s driveway and lamp post collapsing into a hole. M.N. arrived at his house to find that the job had been abandoned and the hole was left unsecured by respondent and his son. Finally, M.N. alleged that respondent never provided a contract, nor obtained any permits for the work. M.N. paid approximately \$9,000.00 in order to fix the damage resulting from respondent's work.
3. Respondent provided a letter to the Board in response to the complaint from

M.N. Respondent stated he was friends with M.N.'s father and agreed to do the work as a favor. When respondent arrived at the site, water was coming out of the ground at the corner of M.N.'s driveway and lamp post. M.N. believed there was a leak in the water main at this location. M.N. asked respondent to dig next to the lamp post. Respondent dug a hole approximately two feet by four feet wide, and two and one half feet deep. The hole then began to fill with water. M.N. asserted that the leak was coming from this location. Respondent disagreed, and stated the water leak was closer to the house and that the water was finding its way into the hole. M.N. instructed respondent to go into the hole to bail the water out in an effort to determine if the leak was coming from this location. After bailing three buckets of water, respondent noticed that the concrete lamp post and footing were shifting toward the hole. Eventually, both collapsed into the hole. Respondent decided he could not work for M.N. and respondent left the scene.

4. On April 28, 2011, respondent appeared before the Board for an investigative inquiry. Respondent was represented by Stuart Santiago, Esq. Respondent advised that his son Eugene occasionally works with him, but is not a W-2 paid employee. Respondent explained that at the insistence of M.N., but against his professional judgement, he began digging in an effort to locate the leak. Respondent admitted he should have utilized other measures to locate the leak rather than to just start digging.

5. Respondent returned the next day with his son and had to bail water out of the hole that was dug the previous day. Respondent was in the hole, bailing water out, when the hole collapsed causing the lamp post to fall on him. According to respondent, the leak was further up the line and not where M.N. told respondent to dig. Respondent admitted he never secured a permit or obtained a contract. Respondent intended to do the work for free as a favor to M.N. After the hole collapsed, respondent admitted he never returned to the sight after the hole collapsed and even left his tools behind.

#### CONCLUSIONS OF LAW

1. The above preliminary findings of fact establish a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(c), in that respondent engaged in grossly negligent conduct by improperly digging a hole at M.N.'s property, at M.N.'s insistence, and against respondent's professional judgment. Respondent also acknowledged that he never returned to the sight after the hole collapsed and even left his tools behind. Additionally, these facts establish a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(h), in that respondent violated a regulation of the Board by utilizing the services of his son, who was not a W-2 employee, to perform the plumbing work for M.N., in contravention of N.J.A.C. 13:32-3.4, which provides that any plumbing work that a licensed master plumber agrees to perform shall be performed only by the licensed plumber or the employee of the licensed plumber.

### DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on January 22, 2013, provisionally reprimanding respondent for engaging in gross negligence in violation of N.J.S.A. 45:1-21(c), and for violating a regulation of the Board in violation of N.J.S.A. 45:1-21(h). Additionally, the Provisional Order of Discipline provisionally imposed a civil penalty in the amount of \$250 for respondent engaging in gross negligence in violation of N.J.S.A. 45:1-21(c).

A copy of the Provisional Order was forwarded to respondent at the last known address on file with the Board by certified and regular mail. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Following the entry and service of the Provisional Order of Discipline, respondent forwarded the civil penalty of \$250 to the Board. Respondent did not provide a written request for modification or dismissal of the provisional Findings of Fact or Conclusions of Law. As a result, the Board deems respondent's payment of the aggregate civil penalty, as well as his failure to provide a written request for modification or dismissal of the Provisional Order, as respondent not contesting the Board's findings. The Board is hereby finalizing the Provisional Order of Discipline.

IT IS ON THIS 25 DAY OF APRIL, 2013  
HEREBY ORDERED THAT:

1. Respondent is hereby reprimanded for violating N.J.S.A. 45:1-21(c) and N.J.S.A. 45:1-21(h).
2. Respondent is hereby assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount of \$250 for engaging in gross negligence, in violation of N.J.S.A. 45:1-21(c). The Board acknowledges that respondent has paid the entire civil penalty prior to the entry of this order.
3. Respondent shall cease and desist from the violations described herein. Subsequent violations will subject respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

BOARD OF EXAMINERS OF MASTER PLUMBERS

By: Peter I. Voros  
Peter I. Voros  
Board Chairman