

Writing or Revising Professional Standards

by
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Introduction

Standards are defined to be criteria providing threshold parameters for professional practice. Standards can be an important "tool" to provide either methods or goals for practitioners. How the profession sees the importance and needs of its services and the criteria that define minimum services has a far reaching affect. Standards not only provide threshold limits governing professional behavior and services but in the process reach for recognition through increased responsibility and foster appreciative public recognition of quality services.

Purpose

Standards should impart on the practitioner a clear and logical reason why the standards are necessary, what they should be used for, and what they are intended to accomplish. In this regard standards should be written:

1. to correct a problem that is damaging the profession, public, or the client;
2. to foster cooperation, trust, and credibility toward the quality services;
3. to establish some minimum and reasonable threshold below

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which discipline or liability should be expected; and

4. to provide some common and reasonable criteria for common contractual situations that could be referenced or take effect without agreement on the particulars.

Problem

Licensing boards and professional societies have or are in the process of preparing or revising professional standards. Many standards are written with the best of intentions but fail in application. What may surprise many practitioners are that standards are used more often against competent practitioners than incompetent practitioners.¹ There are three major causes for this disparity.

First, practitioners that adhere to standards often cannot offer competitive prices against practitioners that do not feel obligated or care to comply with standards. Publishing restrictively higher standards does not force all practitioners to offer quality services for higher fees. Consequently, practitioners following restrictive standards find it more difficult than before to compete with practitioners who do not follow them.

Second, standards are sometimes used by clients to avoid payment

¹ See e.g., Edward Felsenthal, "Doctors' Own Guidelines Hurt Them in Court," *The Wall Street Journal*, p. B1, Wednesday, October 19, 1994

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or force the practitioner to take a reduced fee.² Comprehensive standards provide ample opportunity to find one or more criterion the practitioner has failed to comply with. The fact that the criterion may be inconsequential to the outcome or overall quality of the services is irrelevant for the client looking for an excuse not to pay.³ Any deviation from the standards no matter how inconsequential to the accuracy of the surveying services can and often does provide a reasonable excuse to withhold payment. Faced with a delay for one or more years and the cost of attorneys and litigation, the practitioner is apt to walk away from or compromise the fee.

Third, many attorneys use standards to discredit the practitioner who is an expert witness. The failure of the practitioner to follow each criterion in the standards, no matter how inconsequential to the overall quality of the service, is usually enough for the attorney to introduce doubt in the judge, jury, or the mind of the practitioner's client about the competency or honesty of the practitioner.

Considerations

Care, thought, and good communication skills are required to write standards that do not harm or damage the competent practitioner. Standards should be written in such a manner that they are

² See e.g., *Travis Pruitt & Associates v. Smith*, 192 Ga.App. 496, 385 S.E.2d 132 (1989)

³ There are few surveyors who have not had to deal with a client who has demanded the fee be reduced because of some deviation, defect, or illusory wrong that goes beyond reason.

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reasonable, will advance the profession, and will not do harm or be an unreasonable burden on competent practitioners. Toward this goal, several problems and pitfalls are common and should be eliminated or reduced. They are summarized as follows:

1. **No Underlying Philosophy** – Many standards are an assortment of advice, mandates, and conflicting tones and intent. Lacking a common philosophy, they are similar to a collection of trees that do not appear as a forest – a highway full of cars going in the same general direction rather than a full bus with one destination.

Before writing standards, the underlying philosophy must be established and adhered to throughout the document. The philosophy should fix and adhere to a concept, tone, scope, and level of working knowledge and competence of the practitioner.

The motivation behind some standards appears to be founded on inspiration rather than facts, evidence, or a careful study of failures. The author(s) of the standards should have a clear and logical reason why the standards are necessary, what they should be used for, and what they are intended to accomplish. In analyzing the conceptual framework for standards...

a. Walk away without starting if the standards are meant to

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force the incompetent practitioner to be competent or go out of business. Writing them will be a waste of time better put to more productive endeavors. If the sinner behavior could not be changed Ten Commandments carved on stone surely no mortal will make great headway with another individual by placing words on paper.

- b. Change directions if the standards are written to relieve responsibility and reduce liability for the profession. Writing standards for this reason is like digging for phantom gold – the hole will be deep, cause blisters, receive little sunlight, conceal the digger (author), and eventually become a grave.
- c. Proceed cautiously if the standards are written to help identify incompetent practitioners. Like the Mona Lisa, some readers will see a frown, others a smile, and the profession will more likely than not create a mirror that reflects on themselves rather than a window to identify incompetent practitioners.
- d. Continue with good conscience if the standards are meant to remind the practitioner what their duty is to themselves, other practitioners, the client, and the public. The strongest fence is built by the farmer intending the fence to keep the farmer's cows in rather than the neighbor's cows out.

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Next, set the tone for the standards. In some cases, standards can be written to provide guidance and give advice.⁴ In other cases, standards establish rules and obligations.⁵ To choose the former requires persuasive words. To choose the later requires authority and the resolution to use it. For example, if the author of the standards lack complete authority over either the services or the practitioners, than set the tone of the standards as advice or guidance.⁶ This is also true if enforcement is or will likely be sporadic, inconsistent, incomplete, or minimal. Standards that are written as rules or mandates and then are not enforced create meaningless documents that incompetent professionals ignore with impunity, competent professionals ignore in order to gain a competitive edge (and feel guilty), clients use to deny payment, and attorneys use to press negligence claims.

Third, establish the purpose for the standards. The standards will fix the minimum level of performance. Should the minimum level of performance be a codification of the current practice and competence of practitioners or should the minimum level be an across the board upgrade of the profession to a higher level of competence? If the standards are meant to be a codification of the current practice – get the facts. First, research and establish

⁴ This form of standards often use the word "should" or "may."

⁵ This form of standards often use the word "shall" or "will."

⁶ An example of this would be a surveyor licensing board creating standards to govern construction surveys when engineers also perform them.

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current requirements fixed by statute or court cases. Second, send questionnaires to practitioners and seek evidence of their current procedures, proficiency, capabilities, skills, and qualifications. Be careful to get a sampling of all members and not weighted toward the top. Also, be careful to differentiate between what is done and what should be done. On the other hand, if the standards are meant to upgrade professional practice, make sure that the tone is to mandate and there is both the authority and will to enforce the standards.

Fourth and last, establish a working level of knowledge and competence in the profession, write the standards to that level, and then be consistent throughout the standards. For example, at the low end are technical standards that give a step-by-step procedure and requirement for every service (method oriented standards). Knowledge and professionalism are assumed to be minimal. At the other end are standards establishing reasonable goals while leaving the procedures, route, and methods necessary to meet the goal up to the practitioner (result oriented standards).

2. Lack Authority – Many standards are written as edicts yet the author has no power and therefore no right to make rules regarding the conduct or practice of a profession. To write standards as rules, the author must have some recognized authority. Recognized

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authority is usually derived from statute or by agreement. Statutes may establish the standards directly or give a group or body the power to create standards (enabling statutes).

Authority founded on agreement may be implied or contractual. Implied agreement may flow from voluntary membership in a professional society (peer authority). Continued membership in the professional society implies a willingness to abide by the standards set by the professional society. Contractual authority is where the practitioner binds themselves to standards by "arms length" bargaining.

In some cases, standards attempt to derive or display authority through coercion by citing certain or increased liability.

Example: "Failure to comply with these standards shall make the practitioner liable for damages."

To intimidate by relying on the actions of the court or independent party is always dangerous and prone to backfire. Ordinarily, liability for tortious acts such as negligence requires proof that there was a breach of a recognized duty that was foreseeable and a direct cause of the damages. To suggest these requirements to be all or partially waived or superseded by language in the standards, may encourage dangerous precedents that may have far-reaching and unknown consequences. For example, it may increase the cost and affect the availability of liability insurance.

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Even when there is authority, seldom is authority all-encompassing. The power to create standards do not always equate to the right to create standards. For example, a licensing board in exercising their power to regulate standards for boundary retracement does not have the right to fix the definition of the high water line.⁷

Another way of viewing limitations on authority is to understand that there are limitations on the power itself. For example, statutory authority to enact standards are frequently limited to a certain group (e.g., to licensed members of a profession), by State and Federal Constitutions, other statutes (Administrative Procedures Act), and by the terms of the enabling statute itself.

Standards, especially those written as rules or edicts, must be carefully worded to fit within the actual authority entrusted to the body promulgating the standards. If there is no authority to create or enforce standards and none can be gotten, the only reasonable recourse is to codify the current practice. This should be done using the tone of good advice or guidance.

2. Lack Exclusive Authority – Many standards or sections establish rigorous criteria that binds some but not all practitioners that

⁷ *Board Of Trustees Of The Internal Improvement Trust Fund v. Board Of Professional Land Surveyors*, 566 So.2d 1358, 15 Fla. L. Week. D2324 (Fl.App. 1 Dist. 1990)

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perform the services. This situation frequently arises where a board or profession mandates standards over services that may also be performed by other professions. In other cases, a professional society appears to mandate standards over all practitioners yet all practitioners are not members of the society. As a consequence those practitioners that are bound by rigorous or burdensome standards are placed in a competitive disadvantage when competing against other practitioners not bound by the standards.

If exclusive authority is lacking, do not attempt to mandate higher standards. Codify the current minimum standard of practice. Write the standards as advice or guidance – not rules the practitioner appears obligated to follow.

3. **Deny Responsibility** – Perhaps as damaging as attempting to raise the standards by decree without authority is to seek lower standards by deleting requirements or denying responsibility. The concept of a profession recognizes that certain skills, knowledge, education, and experience possessed by select individuals are necessary to provide needed and important service to the public. By their very nature, the skills, knowledge, experience, and intelligence necessary to provide professional services are beyond that possessed by laypersons. To recognize and call oneself a professional on the one hand while denying the responsibility to use and apply the special skills, knowledge, and intelligence characterizing professional services on the other hand is to make

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the title "professional" a sham and is not in the best interests of the profession or public.

"No profession may, by adopting its own standards of performance, method of operation, or paragons of care, insulate itself from liability for conduct which ordinary reason and logic characterize as faulty or negligent." *Lawyers Title Ins. Co. v. Carey Hodges & Associates, Inc.*, 358 SO.2D 964, 968 (La.App. 1978)

Standards can be an important tool to provide needed guidance and mold the public's perspective of the profession. How the profession sees the importance and needs of its services and the tasks that go into the service has a far reaching affect. Standards not only provide guidance or rules governing professional behavior and services but in the process recognize and reach for recognition through increased responsibility. Responsibility carries a higher risk of liability but the reward for increased responsibility is more involvement, greater reliance, more control, more power, more prestige, and more earning power.

4. **Borrow Here and There** - Many standards were created and subsequently sound like a disjointed compendium of various parts from many sources, haphazardly compiled to form one document under the heading of standards. Usually this situation is fostered by committee members all writing a different part or one person borrowing from many sources. While ideas can usually be safely borrowed from another source, seldom should the language be borrowed. Just as a contract must be modified from job to job, so must standards.

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5. **Confused Intent** – Many standards use obligatory words where guidance is meant and discretionary words where rules are intended. In other cases, individual phrases, sentences, paragraphs, or sections are in harmony but the standards when read as a whole conflict, are not harmonious, or tend to be confusing.

Example 1: "Section 23.2 A retracement survey shall result in monuments at all corners, a plat, and a description ... Section 32.1 Plats... A plat shall be prepared when a report will not suffice..."

Example 2: "Normally, the practitioner shall show all visible encumbrances...."

(A plat is mandatory under one section but a later section interjects to make it conditional if a report is not prepared. The word "normally" implies most of the time but not always while "shall" means always)

This provides fertile field for arguments, accusations, and litigation but does not advance the standard's objectives.

Standards meant to be binding upon all practitioners are properly written using obligatory language like "shall," "shall not," and "must." These define proper conduct that brings retribution such as professional discipline for any failure to abide by the standards. On the other hand, standards written as advice or guidance is generally cast using operative terms like "may" or "can." These words are permissive and introduce matters that allow the practitioner professional discretion. (It should be made clear that no disciplinary action or action for negligence will stand if the practitioner chooses not to act or acts within the bounds of

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such discretion.) In between these two extremes are operative words such as "desirable" and "should." Matters introduced using these operative words do not establish obligations but do provide recommended guidance for practicing in compliance with the intent of the standards.

Standards may contain a combination of these operative words. However, the words should not be combined where one intent is meant.

Improper: "The surveyor should reach agreement with the client on the fee, time, scope, etc., and shall put the agreement in writing."

(Here the practitioner appears to have the discretion to have an agreement but if they choose to reach an agreement they are obligated to evidence the agreement in writing. Obviously, any practitioner that chooses not to put an agreement in writing simply denies they reached complete agreement.)

In conjunction with the words is the intent meant by the words. Standards should not threaten in order to coerce one behavior then later suggest the same behavior be voluntary (of vice versa).

Example: "The practitioner should have a written contract before beginning any services. Failure to have a written contract will result in discipline."

(In this example, the term "should" suggest professional discretion, yet the subsequent sentence provides discipline if the practitioner chooses not to have a written contract.)

The author of standards must take the time and look at each word and how one word relates to another, one paragraph to another, one section to another, one chapter to another, and the document to present and future practice.

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6. **Outside Party Charged** – Attempts to charge obligations to persons not under the authority of the Board or profession is frequently made in standards.

Example: "The client shall be responsible for researching the records."

Standards for a profession have no force and effect on persons who are not members of the profession even if they are adopted by a Licensing Board. There are at least two reasons for this statement. They are summarized by the historical Boston Tea Party that started the American Revolution - oppressive laws without adequate notice and representation are unfair. In the example, the typical client had no say in writing the standards, would not be aware of the standard, and would not have the skills, knowledge, or ability to comply with it.

Not only does this problem do a disservice to the outside party, it does a disservice to practitioners that rely on the standard in good conscience. For example, the practitioner relying on what appears to be an obligation imposed on another will complete their professional services confident they can not be held responsible for the other person's failure. However, in subsequent litigation the standard will be found not to be binding on the other party and the practitioner will be liable.

7. **Lack Definition for Significant Words/Sentences** – Besides the

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need to define ambiguous words and terms that are obvious, each operative word should be carefully analyzed for possible alternative definitions. Standards are frequently written by members of the profession, thinking and intending the document to be used by the members of the same profession. Clearly standards are read by non-professionals. By most accounts, standards are written in part to help protect the public. Consequently, they are read and interpreted by members of the public. Unless the standards clearly provide otherwise, the standards are subject to interpretation by a layperson using a reasonable person's interpretation – not professional interpretation. The danger being that what may seem apparent to practitioners is not apparent or may even carry a different meaning among laypersons or by law.

Example 1: "The licensed individual shall be in responsible charge of the survey."

(To a surveyor this means the surveyor shall check the work products and affix their signature and seal if it reflects the surveyor's professional opinion. To a layperson this sentence means the practitioner will be physically present and supervise each step of the process to include the field work.)

Example 2: "Each person involved with the field work shall affix their signature to the field book"

(To the typical surveyor, a "person" means an individual. Under all state laws a person is defined by statute to be an individual, corporation, partnership, etc.)

Example 3: "The surveyor shall locate all visible improvements on the property."

"... absent the improvements (seeded crop)..." *Dow v. Noble*, 380 N.W.2d 359, 362 (SD 1986) "...In addition to building the new fence, he made several other improvements... brought the ground up to grade ... grubbed out the briars and other brambles ... planted shrubs, flowers and Rosebushes ... lawn" *Robinson v. Leverenz*, 202 P.2d 517, 519-520, 185 Or. 262, 269 (1949) "... improvements on the property including the planting of ... rose

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bushes ... trees, sod, grass, and a garden...." *Ikonomou v. Ikonomou*, 776 S.W.2d 868, 871 (Mo. 1989) also see *Stoffel v. Killian*, 69 N.E.2d 352, 329 Ill.App. 498 (1949)

(In this example, the common law recognizes a broader definition of improvements than the profession generally infers given how the term is used in standards or reports.)

As a consequence the author of professional standards should check and make sure the professional definition is the same as the normal and ordinary definition, which is the same as the legal definition.

8. Inflexible and Shortsighted – Many standards are written with only the present practice in mind despite evidence that now-common procedures will face major changes shortly.

Example: "All physical evidence found in the field that is to be used to fix the location of a boundary shall be surveyed using a closed traverse."

(This standard makes new technology such as G.P.S. inappropriate.)

In other cases, the standards use inflexible terms or words. Similarly, some standards define flexible terms and words with such rigid inflexibility the author of the standards creates a barrier to innovation. This situation sets the practitioner up for needless and unintentional violation of the standards.

Example: "All corners marked by the surveyor shall be monumented with durable monuments. Durable monuments shall be metal at least 0.75 inch in diameter and three feet long."

(In the example, the standard would preclude the use of new innovative plastic monuments containing magnetic chips while allowing brass pipe that is not picked up by a metal detector.)

Ideally, standards should use terms that: 1) provide flexibility

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under various but changing conditions, 2) are readily understood by all practitioners, and 3) can not be misconstrued or mis-defined by a layperson (i.e., other practitioners establish the definition).

Example: "... scale a reasonable surveyor would find acceptable under the circumstance..."

Reasonable is defined as a level of effort, skill, or knowledge exercised by a licensed practitioner possessing ordinary prudence and skill that is provided in the same or similar circumstances.

Acceptable is defined as a minimum level that a licensed practitioner of ordinary prudence and skill would meet under the same constraints and same or similar situation.

(In this example most surveyors would be able to choose a proper scale yet the layperson (e.g., attorney) could not construe the definition against the surveyor without the cooperation and aid of one or more other surveyors).

9. **Flexible, Ambiguous, and Dangerous** – As problematic as inflexible and shortsighted standards are, standards that are too flexible or open to wide and various interpretations may be as problematic and dangerous.

Example: "A practitioner shall locate and show all improvements."

(Here the practitioner is required to show all improvements regardless of their nature, visibility, identity, source, maker, permanency, and relevancy.)

As a rule, each standard should be written to provide some evaluation criteria while allowing for the practitioner to exercise professional judgment within reasonable and acceptable constraints.

Example: "All visible improvements shall be located and shown when a practitioner has reason to believe the improvements may affect the reasonable marketability of the record title." or "All visible improvements within minimum setback restrictions are to be shown

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and located if the improvements appear to the practitioner to have an affect on the reasonable marketability of the title."

(In this example, the practitioner is allowed to exercise a professional opinion so long as it is consistent with other professional opinions. Furthermore, the practitioner is given a constraint consistent with the purpose of the standards – marketability of the title. In the second example, the practitioner is given an additional constraint that is consistent with the normal scope of their work on the property – near the boundary.)

If no other options are apparent, always use a reasonable practitioner standard. An individual who is a member of the profession should be allowed professional freedom so long as it conforms to some minimum acceptable level likely to be used by other similarly situated professionals of ordinary skill and intelligence.

10. **Approve by Implication** – In order to establish particular criterion, sometimes a negative statement is used.

Example: "Wooden stakes are not acceptable monuments."

Unfortunately, by defining the negative, all other behavior is assumed to be positive. Referring to the previous example, all other objects are acceptable by implication including such marginal items as the nail stuck in the dirt. In most cases it is better to state the positive and by implication identify the negative.

11. **Ethics v. Standards** – Professional ethics can be defined as a moral guide for a group – establishing its honor, morality, and integrity. Standards can be defined as a measure competence or

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criteria for comparison. Just like the separation of Church and State, there should be a separation between ethics and standards. Certainly there is a necessary and beneficial relationship between the two. In the end, standards will be used in part to judge the honor, integrity, and morality of the profession. Therefore standards should have an ethical foundation. Nevertheless, ethics are not standards and standards are not ethics. Professional integrity/interaction is not synonymous with professional competence. Surveyors can be ethical yet provide faulty services and vice versa. Therefore to combine the two in one document under the guise of standards will confuse matters. The combination tends to substitute or equate feeling good and achieving respect with competence, accuracy, and quality in professional services.

12. **Categorize the Circumstantial** – The very nature of professional services over technical services requires flexibility and recognition that professional judgment must be accorded great weight. Some authors of standards seem to ignore the nature of a profession by attempting to fit all professional services into restrictive categories.

Example: "These standards shall apply to surveying services and surveyors in the _ and the resulting work products shall comply with the requirements as set forth in one of the categories explained herein."

(This requirement fails to recognize that the services offered by a profession evolve with time, changing technology, and the needs of a society. They also change from client to client and circumstance to circumstance.)

Professional standards should recognize the following: 1)

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Professional services have a far reaching and undetermined impact on parties yet unidentified. 2) Most laypersons expect to receive a certain minimum level of service without being wary, fearful, or feeling threatened with dishonest behavior. 3) Some laypersons, especially other professionals or experienced businesspersons, should be allowed to reach an agreement with the practitioner that will give them services tailored to their particular needs. These criteria are put into effect by using the following or similar language:

Example: These standards shall apply to surveying services and surveyors in the _, except that the Professional Land Surveyor and their client may agree by written contract to exclude any or all the standards from the services sought. Such services excluded from the requirements of these standards shall not be monumented in the field nor shall the services be used as a basis for a description, unless the work products shall clearly set forth the particulars in which the surveying services depart from these standards or communicate a notice of acceptable use or warning of improper use.

13. **Unreasonable Expectations** - Good advice or sensible rules do not always make good standards. Standards should recognize that what may be the best course of action is not always realistic or possible.

Example: "The practitioner shall research and obtain private records that will aid in the location or re-establishment of the boundary."

(Assume the private records are held by a title company that refuse to part with a copy or divulge the information found in the records. Under these standards the practitioner is left with no other alternative but to breach the contract and remove themselves from their client's employ or risk violating the standards.)

Standards should allow for reasonable professional judgments and acceptable alternatives when circumstances permit. Similarly they

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should refrain from establishing expectations that cannot be met or enforced.

Example: "Where customary, an abstract of title shall be furnished to the practitioner."

(In this example, what can be the purpose of making this statement? It creates no enforceable obligation on a third party and creates an unreasonable expectation on the practitioner.)

14. Format Brings Confusion or Facility – Standards are frequently cited in contracts, specifications, disciplinary hearings, litigation, etc. Consequently, the ability to identify minor portions of the standards is eased considerably by using numbers, letters, and roman numerals to identify sections and sub-sections.

Furthermore, as standards are written, the author frequently grapples with ways to be both all-encompassing and flexible while being clear and understandable. These goals can be achieved by including comments and statements of intent.

Example: "To seek payment for professional services, a practitioner shall have written evidence of the agreement and the terms of the agreement...."

Comment: "A completed work order will meet this requirement."

Opinion: "A letter sent to the client summarizing the phone conversation will meet this requirement."

15. Two Similar Statements are One Too Many – To make an important statement or make sure an important point is understood, many standards will restate a requirement or piece of advice in two or more different locations.

Example: "10.2 All plans shall contain a graphic scale ... 12.1 All plans should have a graphical scale depicting the plan distance to actual distance."

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(In one section the graphical scale appears mandatory while in a subsequent section it is advisable but not necessary.)

Avoid making the same or similar statement in two different locations. In a different location it may have a different meaning or connotation. In other cases, a subsequent change in one statement that is not made in the other statement causes conflict or confusion. If the statement is important enough, place the statement in a prominent place or underline it – don't repeat it.

Similarly, avoid referring to another document then stating what the document says. Any change to the reference document will create a conflict.

Example: "The code of ethics as set forth in Board Rules 2321.1 requires the practitioner"

16. **Form Over Substance** – Standards should not become focused on the form or format of the practitioner's work product. Standards should focus on the substance in the work products. The form or format of a practitioner's work products will change dramatically in the next decade. Digital plans will be common perhaps eliminating the need for paper plans. G.P.S. will replace many conventional survey procedures. Research of public records will be done by modem from the office. Field books and even data collectors will become obsolete as field information is sent by signal directly from the field to the office or computer in the vehicle.

Example 1: "The plan will show ... the title block will contain"

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Compare: "The practitioner's work product(s) provided to the client will contain ... and display or note in a prominent location"

Example 2: "The survey shall be based on a closed traverse and shall close mathematically with a minimum tolerance of"

Compare: "All points used to fix the boundary shall be located with sufficient redundant measurements that measurement blunders will be detected."

17. Changing the Law or It's Interpretation – As a rule, professional standards cannot by themselves change the existing law unless they are enacted as a statute. To attempt to change the law or its interpretation using standards is ineffective and gives the practitioner a false sense of security.

Example Standard: "Names of adjacent owners are given for information only and are not meant to imply contiguity, except where the record description of the adjoining property is stated on the survey map to be contiguous."

Compare: "If the practitioner shows the names of adjacent owners the practitioner should state if the adjoining lands are contiguous, not contiguous, or the contiguity is unknown." Comment with Standard: "In the case of _, the Court decided that the names of adjoining property owners shown on a plan of survey, without words of clarification, are treated as monuments and will control over measurements."

(The example wording attempts to change the common law rules of construction regarding the interpretation of names shown on plans. On the other hand, the comparison recognizes the existing rules of construction and attempts to fit the standard to the rule of construction.)

Research the law, recognize the law, accept the law, and write the standards to be in harmony with the law or its interpretation (e.g., using comments to the standards).

18. One Term, One Meaning – Using more than one word or term for

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the same concept may cause problems and lead to confusion. Similarly using the same word or term for more than one meaning causes problems and confusion. Use one term that has a clear meaning to the layperson. In the alternative, define the meaning of the term than use the term for that meaning consistently throughout the document.

Example 1: "The survey shall locate all ... The practitioner will survey ... The survey shall show

Example 2: "The plan ... plat ... drawing ... draught ... draft

(In the first example, the word "survey" is used interchangeably for both the act (noun), process (verb) and the product (noun). In the second example, numerous words are used for the same purpose - to describe a pictorial summary of the practitioner's opinion.)

19. **Individual/Professional Definition** - When attempting to provide professional standards be careful about terms that should be defined by the profession as a group and terms that an individual should define. Without definition, many terms imply an individual definition.

Example: "... an appropriate scale"

Compare: "... a scale a reasonable surveyor of ordinary prudence and skill would find acceptable under the circumstance..."

("Appropriate" is an individual judgment and offers no real guidance. This criterion is met if the individual feels it is appropriate. On the other hand, "a scale a reasonable surveyor of ordinary prudence and skill would find acceptable under the circumstance..." requires the practitioner consider how other professionals would judge the scale.)

In some cases, it may be more concise to define key operative terms such as "reasonable," "acceptable," "appropriate," "normal," etc., to prevent or perhaps allow for individual definition.

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20. **Absolutes** – Be careful about using absolute terms – especially where absolute terms would impose an unreasonable burden. Absolute terms include terms that don't allow for exceptions and terms that include such numerous or burdensome sources that the task itself is onerous or burdensome beyond reason.

Example: "The practitioner will obtain all records ... every plan ... whole property"

Example 2: "The practitioner will search the public records ..."

(In the first example the adjectives include the entire population without exception. In the second example, the adjective "public" by implication not only includes those documents at the registry but also DOT, municipal, and state archive records.)

Absolutes are frequently used to provide clarity and unmistakable limitations. However, to provide clarity, the absolute terms make demands that impose loathsome burdens that cause unreasonable expectations.

21. **Trivial** – Don't establish a particular standard or refinement to a particular standard unless it is important and its violation will clearly detract from the professionalism of the service or has the potential to cause harm to the client, other practitioners, or the public.

Example 1: "The client's name, address, and property location shall be placed in the title block"

Example 2: "The use of the symbol ° may be used in lieu of degree."

22. **Accuracy v. Precision** – Most practitioners can probably

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explain the difference between accuracy and precision. However, when writing standards for retracement surveys the two are erroneously thought to be synonymous. For example, many standards contain "accuracy" tables listing the allowable relative error of closure, angular error, positional tolerance, etc. Some of the more sophisticated tables list the number of angles to be turned, minimum distances, type of equipment, least count, etc. These tolerances relate to the precision of the survey not necessarily the accuracy of the survey. A practitioner could meet all the requirements set by these tables yet have surveyed the wrong property. In certain circumstances, accuracy is abhorrent to precision. Consider a retracement survey where the original survey was conducted with a chain and compass. The most accurate way to retrace this survey is to use a chain and compass rather than more sophisticated equipment that would meet the tolerances established in the tables.

23. Say What They Are Thinking Not What is Meant – As many of the examples show and the previous problem between "accuracy" and "precision" tables indicate, many standards codify what the author is thinking or practices at the time rather than the intent for their thought or practice.

Example: "Monuments shall be metal..."

Intent: Monuments will be capable of being discovered by metal detectors and withstand natural decay and fire.

Situation that meets the standard but not intent: Brass rod is used.

Example: "All surveys will be done using a closed traverse...."

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Intent: Practitioner will check for and discover blunders in their survey.

Situation that meets the standard but not intent: The traverse is closed but no mathematical check is done.

Example: "The practitioner will examine every deed back to the source deed..."

Intent: "The practitioner will investigate courthouse records in sufficient depth such that they are likely to discover errors or problems in the boundary location."

Situation that meets the standard but not intent: The practitioner ignores a probate partition action because it was not a deed.

The result is that the intent is sometimes unclear, professional innovation stifled, and the standards unduly restrictive.

Conclusion

In conclusion, licensing boards and professional societies that are planning to revise or write standards must have more than a need or desire to write standards. Standards have considerable impact on the practitioner's cost, time, and liability. Quality standards should be written in such a manner that the standards:

1. address a wrong, potential problem, problem, or shortcoming that may cause damage or harm to the client, public, or other practitioners;
2. are reasonable;
3. will advance the profession;
4. protect the public;
5. will not do harm to third parties;
6. will not be an unreasonable burden on competent surveyors;
7. give responsibility where responsibility is deserved;
8. are in harmony throughout the standards themselves, with other regulations, existing practice, and future practice;
9. use persuasive words where advice is meant and mandatory words where change is needed; and
10. allow professional leeway and encourage innovation brought on

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by new technology, knowledge, and methodology.

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