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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
MILTON F. LUNCH ETHICS CONTEST

PROVIDING ENGINEERING INFORMATION VIA AN INTERNET
MARKETING COMPANY

Facts:

A marketing company establishes a Web portal and offers a service to customers whereby customers type in questions on various topics (e.g., law, medicine, accounting, engineering, etc.) and, following the receipt of the responses, which are generally fairly detailed responses, the customer pays the marketing company what the customer believes the service is worth, plus an access fee for the Web portal. Following receipt of the payment, the marketing company passes along the customer payment to the service provider (lawyer, physician, accountant, engineer, etc.). Engineer A, a structural engineer, wants to know if it would be ethical for him to participate in this type of business.

Question:

Would it be ethical for Engineer A, a structural engineer, to participate in this type of business?

References:

Section II.2 - NSPE Code of Ethics: Engineers shall perform services only in the areas of their competence.

Section II.5.a - NSPE Code of Ethics: Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.

Section II.5.b - NSPE Code of Ethics: Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona

vide established commercial or marketing agencies retained by them.

Section III.3 - NSPE Code of Ethics: Engineers shall avoid all conduct or practice that deceives the public.

Section III.3.a - NSPE Code of Ethics: Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

Discussion:

Over the years, NSPE Board of Ethical Review has considered a variety of sales and marketing techniques employed by engineers and engineering companies. With the growth of electronic communications and the internet, there has been a proliferation of the types and methods employed by engineers and engineering companies in selling and marketing their services, including new and different methods that require careful review and consideration.

Promotional customs, practices, and standards in the professions have evolved considerably over the past half-century, driven in significant part by a series of rulings by the U.S. Supreme Court in the 1960's that held professional society code of ethics provisions prohibiting advertising violated commercial free speech as well as federal antitrust laws. Following those decisions, professional society code of ethics provisions on advertising were eliminated or modified to reflect a new reality - that advertising professional services was a fact of life and that for the most part, only misleading or deceptive practices could and should be restricted.

Recently, in BER Case No. 10-9, the Board considered whether an engineer could pay a fee to be included in a Web site listing of engineers who offer services in their field of expertise in a specific geographic area and concluded, given the facts of the case, that it was ethical, in part because the Web site contained appropriate disclaimers.

In a prior case, BER Case No. 04-4, the Board determined that engineers could develop Web sites to advertise their engineering services or to list standard professional fees as long as the services offered did not violate NSPE Code of Ethics "responsible charge" requirements or applicable requirements of state licensure law and Board rules of professional conduct. The Board noted that nothing in its opinion was intended to limit new and innovative practice techniques, including the use of Internet Web sites, or electronic practice.

Turning to the facts in the present case, Engineer A is not providing professional advice to clients. He is working as a freelance service provider selling engineering information to customers - apparently anonymously, via a Web portal established by a marketing company. Engineer A does not establish a professional-client relationship with his (also apparently anonymous) customers. To the extent Engineer A has a “client,” it is in the marketing company and his responsibilities to it are limited - presumably he did not exaggerate his engineering qualifications in becoming a service provider.

Engineer A’s compensation for the engineering information he provides is determined by the customer. Presumably, he provides objective information about engineering topics within his competency of structural engineering and does not make material misrepresentations or omit material facts in order to “tell the customers only what they want to hear” in the hope his customers will then pay more.

As long as the marketing company makes appropriate disclaimers to its customers - that its service providers do not have a professional-client relationship with them; that they dispense information to their customers, not professional advice; and that the customers’ requests for information and the service providers’ responses are not confidential; then it is ethical for Engineer A to participate in this type of business, as long as Engineer A limits his participation to structural engineering or other engineering areas where he is competent and that information he provides is not deceptive, containing no material misrepresentation and omitting no material fact.

Conclusion:

As long as the marketing company makes appropriate disclaimers to its customers about its service providers and the information they receive and if Engineer A only answers questions within his competency and does not deceive his customers in doing so, then it is ethical for Engineer A to participate in this type of business.

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