

Registration—Expressing Professional Opinion Without Being Licensed

Case No. 14-12

Facts:

Engineer A is a licensed professional engineer with expertise in structural engineering in State X and is visiting State Y, where Engineer A is not licensed. During the visit, Jones, a construction professional and a colleague of Engineer A asks Engineer A's opinion about the structural design of a building renovation in State Y. Engineer A visits the site and informally observes, what are, in his professional opinion, some technical inconsistencies regarding the structural design that could raise serious health and safety issues. Engineer A brings these structural design issues to the attention of Jones, and Jones thereafter reports Engineer A's concerns to the owner of the building being renovated. Owner then contacts Engineer C, the prime design engineer responsible for the design of the building renovation in State Y, noting Engineer A's observations. Following Engineer C's correction of the technical inconsistencies, Engineer C files a complaint with the state engineering licensure board claiming that Engineer A was engaged in the unlicensed practice of engineering. Engineer A is cited by the state engineering licensure board and is required to pay a fine.

Questions:

1. Was it unethical for Engineer A to offer his opinion without being licensed in State Y?
2. Was it unethical for Engineer C to file a complaint with the state engineering licensure board, claiming that Engineer A was engaged in the unlicensed practice of engineering?

NSPE Code of Ethics References:

- Section II.1. Engineers shall hold paramount the safety, health, and welfare of the public.*
- Section II.1.a. If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.*
- Section II.4. Engineers shall act for each employer or client as faithful agents or trustees.*
- Section II.4.a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
- Section III.3.a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.*
- Section III.7. Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.*

Section III.7.a Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.

Section III.8.a Engineers shall conform with state registration laws in the practice of engineering.

Discussion:

Engineering licensure is a fundamental issue relating to the ethical obligation to comply with state engineering licensure laws and regulations as well as the demonstration of professional competency. Engineering licensure has been a subject for Board of Ethical Review examination in the past.

In BER Case 93-2, Engineer A, a professional engineer with expertise in mechanical systems, was a sole practitioner in a small consulting firm in State X and had a business card indicating that he is a professional engineer. Engineer A was not licensed in State X but was licensed in State Y. The bulk of Engineer A's work involved work to be constructed in State Y. Client B contacted Engineer A to design a project that would be constructed in State X. After completing the work, Client B learned that Engineer A was not licensed in State X but was licensed in State Y. Engineer A had not obtained any authority to perform the services in State X. Client B then had to have another Engineer either redesign the project or carefully review Engineer A's work before sealing it. As a result, Client B incurred additional expenses and delay in the construction of his project. In deciding that Engineer A unethically implied that he was licensed in State X and also unethically designed a project for construction in State X without first obtaining a temporary permit from the state licensing board and other appropriate permits, the Board noted that there was no indication that Engineer A ever informed Client B that he was not licensed in State X. The Board believed Engineer A's failure to provide timely notice to Client B violated NSPE Code of Ethics Section III.3.a. Moreover, under the facts, it appeared that a legitimate question may exist as to whether Engineer A's representation of himself as a professional engineer in State X may have violated the engineering licensure laws in State X. Since Client B incurred additional expenses and delay in the construction of his project, Engineer A's actions also compromise and jeopardize the client's interests, thus violating NSPE Code Section II.4.

More recently, in BER Case 11-3, Engineer A was a professional engineer in private practice in State A. Engineer A performed consulting engineering services for assuring code compliance on a project that was originally designed by a consulting engineering firm based in a province in Canada. Although the Canadian firm's work met all appropriate engineering code requirements in State A, the work performed by the Canadian firm was not signed and sealed by a professional engineer licensed in State A. Engineer A also discovered that the Canadian firm was not registered in State A to perform engineering services during the design and construction of the project, and that the Canadian firm had also been performing consulting engineering services in State A for a number of years without being properly registered. The Canadian firm's engineers and the firm were all licensed in the Canadian province in which the firm was based. Engineer A advised the

State A engineering licensing board in writing of the unlicensed practice by the Canadian firm. Thereafter, the Canadian firm notified Engineer A, advising Engineer A that he had not acted ethically because he did not first discuss the issue with the Canadian firm but instead filed a written complaint against the Canadian firm. Following its review, the Board determined that while Engineer A had an ethical obligation to take action in connection with the Canadian firm's apparent violation of the state engineering licensure requirements, under the circumstances, Engineer A should have first advised the Canadian firm of the action Engineer A planned to take. Engineer A should have provided an explanation for taking the action (e.g., Engineer A's obligation to report under the state engineering licensing law or the Code of Ethics) and also encouraged the firm to self-report.

Turning to the facts in the instant case, while the Board recognizes that Engineer A had an obligation to be licensed in State Y, it is the Board's view that Engineer C's reporting of Engineer A to the State Y engineering licensure board may have been motivated more out of commercial pressures than out of concern over protecting the public health and safety. As with BER Case 11-3, in the Board's opinion, a better course of action would have been for Engineer C to have first advised Engineer A of the actions Engineer C planned to take and provided an explanation for taking the action (e.g., Engineer A's obligation to report under the state engineering licensing law or the Code of Ethics) and also encouraged Engineer A to self-report.

Finally, without expressing an opinion regarding the legality of Engineer A misrepresenting himself as a professional engineer in State Y, we believe that one possible solution under the facts might have been for Engineer A to explore the option of obtaining a temporary permit from the State Y licensing board should that option exist in State Y.

Conclusions:

1. It was not unethical for Engineer A to offer his opinion without being licensed in state Y because of the potentially serious health and safety issues. However, he should have advised Engineer C of his observations.
2. It was not unethical for Engineer C to file a complaint with the state engineering licensing board claiming that engineer A was engaged in the unlicensed practice of engineering in state Y. Engineer C should have included in his complaint to the state engineering board a statement to the effect that the advice given by Engineer A was helpful in protecting the safety, health, and welfare of the public.

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