

Preamble	- Code of Ethics
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REGISTRATION – IMPLYING REGISTRATION IN ANOTHER STATE

FACTS:

Engineer A, a professional engineer with expertise in mechanical systems, is a sole practitioner in a small consulting firm in State X and has a business card indicating that he is a professional engineer. Engineer A is not licensed in State X but is licensed in State Y. The bulk of Engineer A's work involves work to be constructed in State Y. Client B contacts Engineer A to design a project that will be constructed in State X. After completing the work, Client B learns that Engineer A is not licensed in State X but is licensed in State Y. Engineer A had not obtained any authority to perform the services in State X. Client B must now have another Engineer either redesign the project or carefully review Engineer A's work before sealing it. As a result, Client B will incur additional expenses and delay in the construction of his project.

QUESTIONS:

1. Was it ethical for Engineer A to imply that he was registered in State X?
2. Was it ethical for Engineer A to design the project for construction in State X?

REFERENCES:

Preamble	-Engineering is an important and learned profession. The members of the profession recognize that their work has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. In the practice of their profession, engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct on behalf of the public, clients, employers and the profession.
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- Section I.4. -Act in professional matters for each employer or client as faithful agents or trustees.
- Section I.5. -Avoid deceptive acts in the solicitation of professional employment.
- Section II.4. -Engineers shall act in professional matters for each employer or client as faithful agents or trustees.
- Section III.3.a. -Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading or intended or likely to create an unjustified expectation, or statements containing prediction of future success.
- Section III.9.a. -Engineers shall conform with state registration laws in the practice of engineering.

DISCUSSION:

In recent years, there has been a great deal of interest generated within the engineering community regarding the manner in which engineers in this nation are licensed from state to state. Part of the discussion has involved a desire to eliminate the "Byzantine" comity and reciprocity procedures that often create irrational hurdles for engineers to become licensed in more than one state. While some have justified these procedures as a method to screen out incompetent practitioners and maintain standards of practice, others have argued that these procedures merely are a provincial means of protecting and preserving engineering markets for those already licensed within the state. However, with the increasing trend toward free trade around the world, such arcane procedures seem out of step with the changes and the challenges faced by the engineering profession.

The Board has recently rendered an opinion interpreting sections of the Code of Ethics that relate to conformance with the engineering registration laws in the practice of engineering and the obligation of engineers to become registered at the earliest date. In BER Case 90-3, the Board considered a case involving a prominent consulting engineer who was registered in states 1, 2, and 3 and who had on other occasion performed forensic engineering services in connection with accident reconstruction. The engineer was retained by an attorney in state 4 to inspect an accident for the purpose of determining the actual cause of the accident. The engineer was also asked to express a professional opinion during a trial on matters relating to the safety and design of equipment which may have failed, causing the accident. In deciding it was not unethical for the engineer to offer testimony in the manner described, the Board noted that engineers who engage in the practice of engineering or who hold themselves out as engineers to the public have a legal as well as an ethical obligation to make certain that they are professional engineers licensed in accordance with the laws of the state. While the Board indicated that a determination of this issue must find resolution within each state on a case-by-case basis, depending on the nature of the services provided, the language contained in the state engineering registration law and other considerations. With respect to the narrow issue of an individual serving as a technical expert, the Board pointed out that as a general proposition, it was generally acknowledged that an individual may be qualified as a technical expert by a court without possessing the minimum legal recognition as demonstrated by a professional license.

It was also noted that both state and federal courts adhere to this rule, and thus it would appear that unless a particular state licensing law prohibited individuals from performing services as an expert, there would not appear to be any legal or ethical impediment to prevent an unlicensed individual from functioning as an expert.

While in BER Case 90-3, the Board did not specifically address the particular issues involved in this case, the opinion is instructive in that it reinforces the basic and fundamental proposition that engineers who engage in the practice of engineering or who hold themselves out as engineers to the public have a legal as well as an ethical obligation to make certain that they are professional engineers licensed and practicing in accordance with the laws of the state. While the Board concluded in BER Case 90-3 that it was not unethical for an engineer unlicensed in a particular state to serve as an expert witness in that state, we believe a different result is warranted under the facts in this case for a number of reasons.

In BER Case 90-3, we can reasonably assume that the engineer informed the attorney who retained him that he was not licensed in the state in which he is was expected to serve as an expert witness. Therefore, the engineer in BER Case 90-3 appears to have done nothing to have misrepresented his credentials or to have mislead his client (Section III.3.a.) In addition, in BER Case 90-3, the law did not impose an obligation on the engineer to be licensed in the state in which he was expected to testify. Finally, in BER Case 90-3, the engineer's actions did not compromise or jeopardize the interests of the client.

In contrast to the situation in BER Case 90-3, there is no indication that Engineer A ever informed Client B concerning the fact that he was not licensed in State X. We believe his failure to provide timely notice to Client B was a violation of Section III.3.a. of the Code. Moreover, under the facts, it appears that a legitimate question may exist as to whether Engineer A's representation of himself as a professional engineer in State X may have been a violation of the engineering registration laws in State X. Since Client B will incur additional expenses and delay in the construction of his project, Engineer A's actions did compromise or jeopardize the interests of the client in violation of Section II.4. of the Code.

Without expressing an opinion regarding the legality of Engineer A representing himself as a professional engineer in State X, we believe that one possible solution under the facts would have been for Engineer unambiguously indicate on his business card, letterhead, and promotional material that he was not licensed in State X (e.g., "Engineer A, P.E. (not registered in State X)"). While not the only method, we believe this approach would have been one appropriate method of handling the situation.

Finally, we think Engineer A should have first explored the option of obtaining a temporary permit from the State X licensing board. There is nothing to suggest that Engineer A would not be eligible for registration in State X.

CONCLUSIONS:

1. Engineer A unethically implied that he was registered in State X.
2. Engineer A acted unethically by designing a project for construction in State X without first obtaining a temporary permit from the state licensing board and other appropriate permits.

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Note:In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.