



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

BOARD *of* ETHICAL REVIEW



CASE REVIEW:

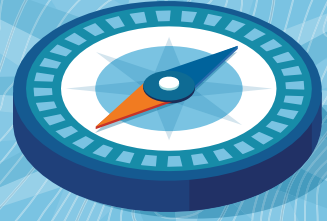
Duty to Report – Material Information

CASE NO. 21-12
APPROVED JUNE 28, 2022

NSPE.ORG



BOARD of ETHICAL REVIEW



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CASE NO. 21-12

APPROVED 6/28/22

FACTS:

Engineer Intern A is an unlicensed engineer in the DOT's bridge inspection program under the supervision of Engineer B, a PE and state DOT director. While reviewing the inspection report for a bridge, Engineer Intern A observed that an inspector under the supervision of Engineer Intern A had failed to report a visibly obvious defect in a concrete bridge member. Concerned, Engineer Intern A reviewed the inspector's reports and photographs going back five years and discovered that the same inspector had failed to report the same defect for at least five years. Engineer Intern A reported the defect to Engineer B but did not report the fact that the defect had been visibly obvious for at least five years.

QUESTION:

1. Was it ethical for Engineer Intern A to fail to report to Engineer B that the defect had been missed for at least five annual inspections?

NSPE CODE OF ETHICS

REFERENCES:

- Section I.1 Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health, and welfare of the public.
- Section I.5 Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.
- Section I.6 Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.
- Section II.3.a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
- Section III.3.a. Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.

NSPE BER CASE REFERENCES:

[19-10](#), [07-10](#), [17-3](#), [98-5](#)

DISCUSSION:

The role of the professional engineer in protecting the public health, safety, and welfare is fundamental to the practice of engineering and is the overriding value in the NSPE Code of Ethics. The NSPE Board of Ethical Review has considered ethical dilemmas involving the public health and safety on many occasions. While there can be no one standard that applies to all of these types of cases, there are basic values and principles in the NSPE Code of Ethics that provide important guidance to professional engineers who are faced with such situations.

An illustration of how the Board has addressed this issue can be found in BER Case [19-10](#). In this case, Engineer A was hired by Client B to conduct a building investigation to determine the origin and cause of a fire resulting in financial loss. Engineer A observed the building to be structurally unstable. Engineer A performed a preliminary investigation of the building and after speaking with Client B, concluded that there were recent structural changes made to the building that may have caused the roof to sag and the walls to lean outward due to insufficient lateral restraint. Engineer A also learned that following construction modifications, the building was issued a certificate of occupancy by a county building official. Although not imminent, Engineer A believed collapse of the building was a danger. Engineer A immediately advised Client B and called the county building official. The county building official did not return Engineer A's phone call. Engineer A also recommended to the owners that they should brace the building to prevent its collapse.

In that case, the Board decided that although Engineer A did not believe the building was in danger of imminent collapse, Engineer A had an obligation to continue to pursue a resolution of the matter by working with Client B and by contacting the supervisor of the county official, the fire marshal, or any other agency having jurisdiction to determine whether an investigation was warranted after the issuance of the certificate of occupancy.

In BER Case [07-10](#), the Board was faced with a case in which Engineer A had designed and built a barn with horse stalls on his property. Four years later, Engineer A sold the property, including the barn to Jones. Later, Jones proposed to extend the barn and, as part of the extension, removed portions of the columns and footings that supported the roof. The changes were approved by the town, the extension was built, and a certificate of occupancy was issued. Engineer A learned of the extension and was concerned that the modified structure could be in danger of collapse due to severe snow loads. Engineer A verbally contacted the town supervisor, who agreed to review the matter, but no action was taken. The Board concluded that while Engineer A had acted ethically by taking prudent action in notifying the town supervisor, the individual presumably with the most authority in the jurisdiction, Engineer A should also have notified the new owner in writing about the perceived deficiency.

In BER Case [17-3](#), Engineer A was a professional engineer and registered architect with extensive design and forensic engineering experience. In performing a forensic engineering investigation for an insurance company, Engineer A was asked to look at a beam in a residence under construction that had been burned. Following the initial investigation, Engineer A learned that the construction contractor determined that the beam could be reused on the project. Engineer A ex-

amined the beam and determined that, while it was only slightly charred, the beam appears too light to provide adequate structural support. Engineer A measured the tributary area of the roof, floor, and wall bearing on the beam and ran a series of structural calculations. Based upon the review, Engineer A determined that the beam was seriously under-designed. Engineer A also observed that, since the residence was a tract residence, there were other identical designs in the subdivision. Engineer A wrote the report and identified the design defect and the larger concern regarding the possibility that an inadequate structural member was used in other houses in the subdivision. Engineer A submitted the report to the retaining insurance company.

The NSPE BER decided in that case that Engineer A had ethical obligations under the NSPE Code of Ethics beyond providing the report to the retaining insurance company. Engineer A had further responsibilities to take additional steps, including contacting local building officials, individual homeowners, and the local homeowners' or community civic association to advise them of the finding.

Similarly, in BER Case [98-5](#), Engineer A, a PE responsible for the City's building inspection program, was pressed between reductions in staff due to budget cuts and implementation of new, more rigid code requirements which greatly enhanced and protected the public's health and safety. Engineer A met with the chairman of the local city council to discuss his concerns. The chairman indicated a willingness to hire additional code inspectors, if Engineer A will concur with a proposed ordinance that would permit buildings already under construction to be "grandfathered" under the older code requirements. The Board determined that it was not ethical either for Engineer A to agree to concur with the chairman's proposal or to sign inadequate inspection reports.

In the present case, Engineer Intern A failed to report the material information that the visibly obvious defect had been missed in inspection for at least five years. Engineer Intern A had a responsibility to report all material facts related to the visibly obvious defect. As a practical matter, revealing that the visibly obvious defect had been in existence and unchanged for at least five years might have actually reduced the urgency of any investigation, but Engineer Intern A was not yet qualified to either make that determination or evaluate the materiality of the information.

CONCLUSIONS:

1. It was not ethical for Engineer Intern A to fail to report to Engineer B that the defect had been missed for at least five years. That is material information that could have been critical to Engineer B's decision-making.

Board of Ethical Review:

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of



application of the NSPE Code of Ethics to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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