



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

BOARD *of* ETHICAL REVIEW



CASE REVIEW:

Misrepresentation of Qualifications

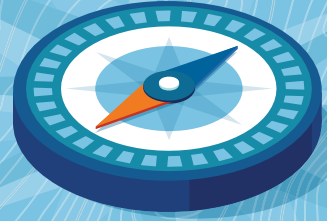
CASE NO. 21-09
APPROVED MARCH 21, 2022

NSPE.ORG



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MISREPRESENTATION OF QUALIFICATIONS

CASE NO. 21-09

APPROVED 3/21/22

FACTS:

Engineer A is a licensed Professional Engineer in three states (C, D, and E) and is a Board-certified Diplomate in Forensic Engineering. Attorney X contacts Engineer A, seeking the services of a non-engineering expert to provide testimony in State M. Engineer A agrees to evaluate the case, prepare an expert opinion, and provide testimony. The licensing statute in State M specifies that any engineer providing expert testimony in a State M court must be licensed in State M. Engineer A signs the report as “Consultant A, Board-certified Diplomate in Forensic Engineering,” making no reference whatsoever to licensure status.

QUESTIONS:

1. Was Engineer A’s self-description in the expert report ethical?

NSPE CODE OF ETHICS REFERENCES:

- | | |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Preamble | As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity, engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct. |
| Section I.1. | Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts. |
| Section II.5.a. | Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates’ qualifications. |
| Section III.1.d. | Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession. |
| 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:

[95-10](#), [04-11](#), [19-3](#), [20-1](#)

DISCUSSION:

Issues of identification as an engineer, achievement of a professional engineer's license, and duties of disclosure have come to the Board of Ethical Review with some regularity. For example, in BER Case [95-10](#), ENGCO referred in sale materials to key personnel as "Engineer" and "Design Engineer," when those personnel were not licensed, did not have engineering degrees, and, in fact, did not have college degrees of any sort. ENGCO's references were consistent with federal agency contracts that referred to inspection personnel as "Engineers." However, ENGCO made inquiry of the BER because of concerns that these references violated the Code of Ethics. The BER agreed with ENGCO that these references likely violated the Code's requirements that public statements be truthful, that engineers are to avoid deceptive acts, and that engineers are not to falsify their qualifications or permit misrepresentations of their qualifications. [The BER noted that, in some jurisdictions (at some points in time), non-degreed individuals could qualify for licensure and could legitimately use the title.] Thus, using a title to which one is not entitled is unethical.

Similarly, in BER Case [04-11](#), four different self-designation situations were evaluated, but only the first three are of interest here. (1) Engineer is licensed in States B, C, and D, but hands out business cards at a business meeting in State E. The business card states NO physical address. The BER found this to be unacceptable, because, although handing out a business card is an expression of accepted business etiquette and does not automatically become an offer to do work, the ab-

sence of a physical address creates confusion and the appearance of deception about licensure.

In the second situation (2), Engineer's business card clearly identifies the states in which a license is held and that Engineer's business address is in another state, one in which no license is held. The BER noted a conventional assumption that, absent other information, an Engineer with a "P.E." designation is licensed in the state of the specified address. However, in this case, Engineer clearly did not list the address state as a state in which a license was held. Clarity was provided and ethical conformity was preserved.

Likewise, in the third situation (3), Engineer's business card has an address in State B, but states that Engineer is licensed only in State C. Engineer performs engineering work in State C and non-engineering consulting in State B. As in the second situation, clarity was provided and ethical conformity was preserved.

In BER Case [19-3](#), Engineer A, a forensic mechanical engineer, chairs a boiler code standards and safety committee within an engineering society, while Engineer B, also a forensic mechanical engineer, is a member of one of the technical subcommittees. Engineer B is retained as an expert by Plaintiff's attorney in a boiler explosion case. Engineer A is approached by Defendant's attorney to serve as an expert in the case. The BER held as follows: "Engineer A is serving as a volunteer to a technical society standards-setting committee to develop fact-based objective technical codes and standards for the benefit of the public. It would appear that Engineer A would be offering opinions as a mechanical engineer with expertise in safety engineering independent of any role as the safety codes and standards chair. While Engineer A's opinion may be informed somewhat by [the] experience in working with safety codes and standards, presumably

Engineer A will exercise independent judgment and discretion in rendering his opinion. . . . [T]here does not appear to be any conflict. . . . At the same time, Engineer A should be mindful of certain critical obligations clearly required under the facts. First, Engineer A has an obligation to (1) fully disclose to Attorney X his role as the chairman of the boiler code standards and safety committee within an engineering society and (2) advise [Defendant's attorney] that Engineer B serves as a member of one of the technical subcommittees within the boiler code standards and safety committee. In addition, Engineer A also has an obligation to “. . . not engage in any written or verbal exchanges with Engineer B regarding the pending litigation without direction from legal counsel.”

Finally, in BER Case [20-1](#), Engineer Intern explained to a prospective employer the intention to take the PE exam in the coming weeks, but was not asked and did not disclose two previous failures to pass the PE exam. The question was whether the failure to disclose constituted the omission of a material fact. In light of the employer's decision to offer employment with the full knowledge that the Engineer Intern had not passed the PE exam, the BER concluded that the omission was not material and, therefore, not unethical.

Turning to the facts of the present situation, there are two questions. First, was it ethical for Engineer A to provide expert services in State M, a state in which Engineer A is not licensed? Second, was it ethical for Engineer A to sign the report as “Consultant A, Board-certified Diplomate in Forensic Engineering.”

It should be noted that Engineer A was retained to provide non-engineering expert services. So long as Engineer A was qualified as an expert without relying on engineering qualifications (education, experience, and examination), Engineer A is not precluded or restricted by the NSPE Code of Ethics from providing those

non-engineering expert services. However, Engineer A was clearly sensitive to the issue of State M licensing, because Engineer A was careful to exclude the P.E. designation from the signature block of the report. Unfortunately, by claiming the credential of Board-certified Diplomate of Forensic Engineering, Engineer A claimed the “E” word, “Engineer.” Furthermore, the most cursory inquiry would show that a Board-certified Diplomate in Forensic Engineering is required to be a licensed Professional Engineer. In accordance with the findings of BER Case 95-10, incorporating “Engineer” or “Engineering” into one's title without actually having the credential, is unethical.

Furthermore, incorporating “Engineer” or “Engineering” into Engineer A's signature brought Engineer A under the purview of State M's licensing law, with which Engineer A was not in compliance. That constitutes unlicensed practice, which is both unethical and unlawful.

It should be acknowledged that BER Case [04-11](#), situation (3) clearly contemplates that engineers who qualify as experts in non-engineering areas may provide those non-engineering services in jurisdictions in which they are not licensed. This presumes that the engineer is not offering opinions about science and/or mathematics directly related to his/her engineering qualifications.

CONCLUSIONS:

Provided that Engineer A qualified as an expert without relying on engineering qualifications, Engineer A's self-presentation as a consultant-expert without identifying status as a licensed professional engineer was not unethical. However, when Engineer A claimed status as a Board-certified Diplomate in Forensic Engineering, Engineer A's self-presentation became unethical.



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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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