

Providing Engineering Advice Via Web Portal

Case No. 12-7

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) 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.1.d. - NSPE Code of Ethics: *Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.*
- Section II.1.e. - NSPE Code of Ethics: *Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.*
- Section II.3.b. - NSPE Code of Ethics: *Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.*
- Section III.1.e - NSPE Code of Ethics: *Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.8 - NSPE Code of Ethics: *Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected..*
- Section III.8.a. - NSPE Code of Ethics: *Engineers shall conform with state registration laws in the practice of engineering.*
- Section III.8.b. - NSPE Code of Ethics: *Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.*

Discussion:

Marketing techniques in connection with the practice of engineering have been transformed by new and innovative technologies. The Internet, Web sites, social media (Twitter, Facebook, etc.), the use of handheld devices, and other software and hardware technologies have pushed the boundaries of what is acceptable within the

practice of engineering. The time when a black and white “tombstone” advertisement in a professional or technical society publication was the only acceptable form of business promotion is long past.

The NSPE Board of Ethical Review has examined various forms of business promotion in the past. For example, in BER Case No. 04-4, the Board considered a case involving Engineer A, a professional engineer licensed in four states, who established a Web site, www.engineerseals.com, which indicated that Engineer A’s company would seal professional engineering drawings for a standard prescribed fee per page. The information on the Web site stated the following:

“Get your project approved! Engineerseals.com provides a convenient, cost-effective way for you to obtain sealed documents from a licensed engineer to meet your local or state requirements. The online questionnaires and confirmation processes help us determine the specific services you need. We will provide direct engineering supervision, and depending on your project, we will:

- *Review and modify your plans, shop drawings, specifications, and calculations;*
- *Generate the necessary drawings, plans, specifications, and reports;*
- *Perform engineering investigation, evaluation, and consultation; or*
- *Perform site visits.*

Upon receipt of your information, we will contact you directly. Your responses help us to simplify the review process and ultimately help us customize the services to meet your needs. The next time you need plans reviewed for building construction codes and permit approvals, visit engineerseals.com. We’ll help you get your remodeling, renovation, and new building projects from draft to development efficiently and professionally. The process is easy.”

The Board decided that Engineer A’s actions were unethical because the actions were in violation of the NSPE Code of Ethics provisions requiring engineers to adhere to applicable “responsible charge” requirements as well as applicable state licensure laws and Board rules of professional conduct. At the same time, the Board made it clear that it was not *per se* unethical for Engineer A to develop a Web site to advertise Engineer A’s engineering services. The Board noted that as currently (and as presumably in the future) configured, the Internet is accessible virtually everywhere. The Board cautioned that it was essential for an engineer to be familiar with and adhere to applicable state licensure laws in the practice of engineering regarding electronic media and concluded by noting that nothing in its opinion was intended to limit new and innovative practice techniques, including the use of the Internet, Web sites, or electronic practice.

More recently in BER Case 10-9, Engineer A paid a fee to be included in a Web site listing of engineers who offered services in an area of expertise in a specific geographic location.

The service essentially worked as a "matchmaking" process. Potential clients initiated contact by visiting the Web site and by voluntarily providing the requested information about their project requirements. The Web site did not contain language endorsing any engineer but instead includes disclaimers to the contrary. In deciding that it was ethical for Engineer A to participate in the Internet-based marketing service under these circumstances, the Board was of the view that the method being utilized by Engineer A fell within the acceptable limits of the NSPE Code provisions, which permits the use of a bona fide, established commercial or marketing agency retained by them. The Web site did not appear to include misleading or deceptive information and the activities did not suggest Engineer A would be engaging in the unlawful practice of engineering in violation of state laws and regulations. The site appeared to link potential clients to Engineer A on a strictly voluntary basis and contained appropriate disclaimers so that there was no misleading implications regarding endorsements or the quality of the services provided.

Regarding the present case, it is the Board's view that there are several questions that would need to be answered before Engineer A could proceed with participation in this type of business. While it appears that the company in question is a bona fide established commercial or marketing company, before agreeing to participate in the marketing company's efforts Engineer A has an affirmative obligation to verify and continue to monitor the marketing company to make sure that the marketing company is reputable and lawfully engaged in the subject activities and that they are not engaged in unlawful activities. In recent years, while many new, innovative, and creative services have been created over the Internet, there have also been instances of fraud, deception, and abuse. In this connection, Engineer A should also contact all state engineering licensure board in those states where Engineer A is licensed and plans to practice in order to make certain that practicing engineering in this manner is consistent with the state engineering licensure laws and regulations in those states. Furthermore, before Engineer A accepts any assignment through this online question and response process, Engineer A must be completely satisfied that he has all of the necessary facts and possesses the necessary competence to express an opinion on the matter that is the subject of the question.

In closing, it is the Board's view that there are several questions that would need to be answered before Engineer A could proceed with participation in this type of business, regarding such matters as the lawfulness of its activities, possibility of fraud, deception and abuse, compliance with state engineering licensure laws and regulations, and Engineer A's technical competence to perform the services in question. Engineer A should be mindful of risk management, loss prevention, and professional liability exposure when providing services in this manner.

Conclusion:

While the NSPE Board of Ethical Review has reservations regarding the rendering of professional engineering services in the manner stated under the facts, without more facts to indicate a clear potential for a serious problem, the NSPE Board concludes that it is ethical to offer professional engineering services in this manner as long as Engineer A adheres to the NSPE Code of Ethics for Engineers.

Board of Ethical Review:

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NOTE: The NSPE Board of Ethical Review considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials, and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

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 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 NSPE 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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