

Licensure—Out of State Services

Case No. 19-6

Facts:

Engineer A is licensed in State A and is retained by an attorney in the state to evaluate a large piece of capital equipment that failed in an industrial plant located there. There is a pending legal action before the state courts.

Following the equipment failure, the owner moved the equipment to its warehouse in State B. Engineer A is not licensed in State B.

Question:

Would it be ethical for Engineer A, who is not licensed in State B, to inspect the equipment in State B?

NSPE Code of Ethics Reference:

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

NSPE BER Case References: [93-2](#), [11-3](#), [14-12](#)

Discussion:

Engineering licensure encompasses the fundamental issues of 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 NSPE 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 was a professional engineer. Engineer A was not licensed in State X but was licensed in State Y. The bulk of Engineer A's work was 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 might exist as to

whether Engineer A's representation of himself as a professional engineer in State X violated the state's engineering licensure laws. Since Client B incurred additional expenses and delay in the construction of his project, Engineer A's actions also compromised and jeopardized the client's interests, thus violating NSPE Code Section II.4.

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 advised Engineer A that he had not acted ethically because he did not first discuss the issue with the Canadian firm before filing a written complaint against it. 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 he 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.

More recently, in [BER Case 14-12](#), Engineer A was a licensed professional engineer with expertise in structural engineering in State X and was visiting State Y, where Engineer A was not licensed. During the visit, Jones, a construction professional and a colleague of Engineer A, asked his opinion about the structural design of a building renovation in State Y. Engineer A visited the site and informally observed what were, in his professional opinion, some technical inconsistencies regarding the structural design, which could raise serious health and safety issues. Engineer A brought these structural design issues to the attention of Jones, and Jones thereafter reported Engineer A's concerns to the owner of the building being renovated. Owner then contacted 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 filed a complaint with the state engineering licensure board claiming that Engineer A was engaged in the unlicensed practice of engineering. Engineer A was cited by the state engineering licensure board and was required to pay a fine. The Board of Ethical Review found that 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, the Board also concluded that Engineer A should have advised Engineer C of his observations.

Turning to the facts in the present case, it is the Board of Ethical Review’s opinion that Engineer A has an obligation to review the definition of the practice of engineering in State B or become licensed in State B if the activities Engineer A will be performing require a license. This could include applying for and receiving a temporary permit from State B or some other regulatory authorization. Unlike the facts in the earlier cases, the facts in the present case do not appear to involve an imminent threat to the public health, safety, and welfare, and, unlike the facts and circumstance in [BER Case 14-12](#), Engineer A is not acting in a pro-bono capacity.

Conclusion:

Engineer A has an ethical obligation to review the definition of the practice of engineering in State B or become licensed in State B if the activities Engineer A will be performing require a license.

Board of Ethical Review:

Vincent P. Drnevich, Ph.D., P.E., F.NSPE

Mark H. Dubbin, P.E., LEED AP

Jeffrey H. Greenfield, Ph.D., P.E., F.NSPE

Kenneth L. McGowan, P.E., F.NSPE

Craig N. Musselman, P.E., F.NSPE

Hugh Veit, P.E.

Susan K. Sprague, P.E., F.NSPE (Chair)

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 of Ethics 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 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.

This opinion is for educational purposes only. It may be reprinted without further permission, provided that this statement is included before or after the text of the case and appropriate attribution is provided to the National Society of Professional Engineers’ Board of Ethical Review.

To obtain additional NSPE opinions, visit www.nspe.org or call 888-285-6773.