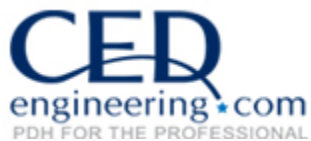

Engineering Ethics for Nebraska Professional Engineers

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Chapter 1

Overview of Nebraska Engineering Board Regulations

Nebraska Board of Engineers and Architects

The mission of The Nebraska Board of Engineers and Architects (Board) is to establish requirements for education, experience, examination, and enforcement for the practices of engineering and architecture to safeguard life, health, and property, and to promote the public welfare.

The Board was created in 1937 by the legislature to regulate the practice of engineering and architecture in the state of Nebraska. The Board licenses and monitor architects and professional engineers to ensure that those who practice these professions are qualified through training, education, and experience. The Board also enforce the laws governing the practice of engineering and architecture.

The Board consists of eight members: four professional engineers, three architects, and one member of the public. One architect and one professional engineer must be faculty at the University of Nebraska appointed upon recommendation of the Dean of Architecture and the Dean of Engineering, respectively. All Board members are appointed by the Governor of Nebraska and serve terms of five years.

The function of the members of the Board is to advise on licensing requirements, licensing examinations and practice issues, as well as participate in licensure disciplinary and/or restoration and moral character proceedings. The Board is responsible for implementing the provisions of the Nebraska Engineers and Architects Regulation Act, Sections 81-3401 to 81-3455 of the Nebraska Statutes and the Rules and Regulations of the Nebraska Board of Engineers and Architects, Title 110 of the Nebraska Administrative Code, Chapters 1 through 11.

Nebraska Engineers and Architects Regulation Act (Statutes)

The Nebraska Engineers and Architects Regulation Act is a collection of state laws organized by subject area into a code made up of titles, chapters and sections. The most recent changes to the Act were enacted through Legislative Bill 23 of the One Hundred Fourth Legislature, First Session, and became effective August 30, 2015.

The Nebraska Engineers and Architects Regulation Act, Sections 81-3401 to 81-3455 of the Nebraska Statutes, governs the practice of engineering and architecture in the state of Nebraska to safeguard life, health, property, and promote the public welfare through licensing and enforcement of state statutes. The Act also ensures those who practice engineering and architecture are qualified through education, experience and examination.

The Nebraska Administrative Code

Title 110 of the Nebraska Administrative Code is a compilation of the rules and regulations of the Nebraska regulatory agencies. It is written by the Board to enable administration of the Statutes and cannot exceed the powers assigned to the Board by the Legislature. Its counterpart in the federal system is the Code of Federal Regulations. It is organized by titles and chapters with each title number representing a department, commission, board or other agency.

The Nebraska Rules and Regulations state the rule followed by statutory authority, implementation and a history of the rule. The set is annotated with decisions of the Federal courts, State appellate courts, State Attorney General opinions, final and recommended orders of the Division of Administrative Hearings and final agency orders. At the end of each rule, a history note is located starting with title number. The history note indicates when the rule has been modified, renumbered, or repealed. The Rules and Regulations were last updated on November 1, 2017.

Title 110 (Chapters 1 through 11) of the Nebraska Rules and Regulations pertains exclusively to the Nebraska Board of Engineers and Architects and its functions with respect to the practice of engineering and architecture. Pertinent excerpts of these rules, as they relate to the code of professional conduct, are presented in Chapter 2.

Nebraska Board Disciplinary Authority

The Board enforces the Engineers and Architects Regulation Act and the rules and regulations, including enforcement against any unlicensed person. If any person refuses to obey any decision or order of the Board, the Board or, upon the request of the Board, the Attorney General or the appropriate county attorney shall file an action for the enforcement of the decision or order, including injunctive relief, in the district court. After a hearing, the court shall order enforcement of the decision or order, or any part thereof, if legally and properly made by the Board and, if appropriate, injunctive relief.

The Board, after hearing and upon proof satisfactory to the Board, may determine by two-thirds majority vote that any person or organization has violated the Engineers and Architects Regulation Act or any rules or regulations. Upon a finding that a person or organization has committed a violation, one or more of the following actions may be taken against such person or organization upon a two-thirds majority vote of the Board:

- a. Issuance of censure or reprimand;
- b. Suspension of judgment;
- c. Placement of the offender on probation;
- d. Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;
- e. Imposition of a civil penalty not to exceed ten thousand dollars for each offense. The amount of the penalty shall be based on the severity of the violation;
- f. Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure;
- g. Issuance of a cease and desist order;
- h. Imposition of costs as in an ordinary civil action in the district court, which may include reasonable attorney's fees and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or
- i. Dismissal of the action.

Chapter 2

Nebraska Rules of Professional Conduct

We, as Professional Engineers, are expected to take reasonable precautions and care in fulfilling our engineering duties and uphold the honor and integrity of our profession. To understand what this means, let's review Title 110 of the Nebraska Administrative Code, in particular Chapter 5, "Code of Practice". (Note: If you wish to review the entire title, please click on: <https://ea.nebraska.gov/sites/ea.nebraska.gov/files/doc/EASHandbook2017.pdf>)

Title 110 of the Nebraska Administrative Code

CHAPTER 5. CODE OF PRACTICE

5.1 Competence

5.1.1 In practicing engineering or architecture, the architect or professional engineer shall act with reasonable care and competence and shall apply the technical knowledge and skill ordinarily applied by architects or professional engineers of good standing in the same locality.

5.1.2 In designing a project, the architect or professional engineer shall take into account all applicable federal, state, and municipal laws and regulations. While the architect or professional engineer may rely on the advice of other professionals (e.g., attorneys, architects, professional engineers, or other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, the architect or professional engineer shall not knowingly design a project in violation of such laws and regulations.

5.1.3 The architect or professional engineer shall undertake to perform professional services only when they, together with those whom the architect or professional engineer may engage as consultants, is qualified by education, training, and experience in the specific technical areas involved.

5.1.4 No person shall be permitted to practice engineering or architecture if, in the Board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

5.1.5 An architect or professional engineer convicted of a crime in connection with their profession or a crime of moral turpitude under state law, federal law, or the law of another jurisdiction, may be held in violation of the code of practice if, in the opinion of the Board, the events and circumstances leading to the conviction indicate a condition which would affect the competency of the architect or professional engineer to serve the health, safety, and welfare of the public.

5.1.6 The architect or professional engineer shall not sign, seal, or attest to any work pertaining to any technical discipline or specialty that the architect or professional engineer does not have professional training and experience.

5.2 Conflict of Interest

5.2.1 The architect or professional engineer shall not accept compensation for their services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

5.2.2 If the architect or professional engineer has any business association or direct or indirect financial interest which is substantial enough to influence their judgment in the selection of any contractor or sub-consultant, or in connection with their performance of professional services, the architect or professional engineer shall fully disclose in writing to their client or employer the nature of the business association or financial interest. If the client or employer objects to such association or financial interest, the architect or professional engineer will either terminate such association or interest or offer to give up the commission or employment.

5.2.3 The architect or professional engineer shall not solicit or accept compensation from material or equipment suppliers, contractors, or sub-consultants in return for specifying or endorsing their products.

5.2.4 When acting as the interpreter of construction contract documents, studies, and reports, the architect or professional engineer shall render decisions impartially. When acting as the judge of contract performance, the architect or professional engineer shall render decisions in an objective manner, favoring neither party to the contract.

5.2.5 An architect or professional engineer who initiates a complaint to the Board shall not become involved as the architect or professional engineer of record for the project which was the subject of the complaint.

5.2.6 Architects and professional engineers shall not solicit or accept a contract for professional services from a governmental body when the architect or professional engineer, or a principal or officer of the architect's or professional engineer's organization, serves as a voting or non-voting member, whether elected or appointed, or serves as an employee or contractor to perform professional services, of the same governmental body which is procuring the professional services. For purposes of this subparagraph, "governmental body" means a board, council, commission, or similar multi-membered body of any county or political subdivision. Architects and professional engineers are not in violation of this provision, however, if the architect or professional engineer, or the principal or officer of their organization who serves as a member of the governmental body, plays no role in the solicitation or procurement of the contract on behalf of the governmental body.

5.3 Disclosure of Professional Relationships or Responsibility

5.3.1 When making public statements on engineering or architectural questions, the architect or professional engineer shall disclose if they are being compensated for making such statements.

5.3.2 The architect or professional engineer shall accurately represent to a prospective or existing client or employer their qualifications and the scope of their responsibility in connection with work for which they are claiming credit.

5.3.3 The architect or professional engineer possessing knowledge of a violation of these rules by another architect or professional engineer shall report such knowledge to the Board.

5.4 Compliance with Laws

5.4.1 The architect or professional engineer shall not, in the conduct of their engineering or architectural practice, knowingly violate any state or federal criminal law. Allegations of violations of this section may be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

5.4.2 The architect or professional engineer shall neither offer nor give any gift of significant value, or any monetary payment to a government official with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect or professional engineer is interested or has an interest.

5.4.3 The architect or professional engineer shall comply with the laws and regulations governing their professional practice in any United States jurisdiction.

5.4.3.1 An architect or professional engineer may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect or professional engineer is disciplined in any other United States jurisdiction.

5.4.3.2 A person whose Nebraska license was issued on the basis of an NCARB Certificate or NCEES Record shall, upon suspension or revocation, have their Nebraska license suspended until the certificate or record is reinstated.

5.4.3.3 A Nebraska license based upon comity with another jurisdiction shall be concurrently suspended upon suspension or revocation of that jurisdiction's license, pending reinstatement of the license by the other jurisdiction.

5.4.3.4 A license under suspension must be kept current through the suspension period. If the license has expired during the suspension period, a new application for licensure will be required.

5.4.4 Architects and/or professional engineers are responsible for obtaining formal review and approval of design work when such approval is required prior to construction.

5.5 Professional Conduct

5.5.1 Each organization maintained for the purpose of serving the public through professional engineering or architectural work, including the preparation of drawings, specifications, reports, and the administration of contract documents, shall have a qualified architect or professional engineer in responsible charge of the work.

5.5.2 The architect or professional engineer shall not sign or seal drawings, specifications, reports, or other professional work for which they do not have direct supervision. If the portions of such professional work were prepared by the architect's or professional engineer's consultants who are licensed under the law of the State of Nebraska or another state, the architect or professional engineer may sign or seal that portion of the professional work if the architect or professional engineer has reviewed such portion, has coordinated its preparation, and accepts responsibility for its adequacy.

5.5.3 The architect or professional engineer shall not engage in conduct involving fraud or wanton disregard of the rights of others.

5.5.4 The architect or professional engineer shall not engage in unethical, immoral, or dishonorable conduct that would indicate lack of fitness to perform the tasks required by clients or a level of proficiency that is insufficient to serve the public interest.

5.5.5 The architect or professional engineer shall not in advertisements or public statements engage in misleading, untruthful, or improbable statements, or flamboyant, exaggerated or extravagant claims concerning the architect's or professional engineer's professional excellence or abilities.

5.5.6 The architect or professional engineer shall not knowingly aid or abet the practice or the performance of activities requiring a license by a person not licensed to conduct such practice or activity.

5.5.7 The architect or professional engineer shall not deliberately make a materially false statement or fail deliberately to disclose accurately and completely a material fact requested in connection with their application for licensure or renewal or otherwise requested by the Board.

5.5.8 The architect or professional engineer shall not assist the application for licensure of a person known by the architect or professional engineer to be unqualified in respect to education, training, experience, or character.

5.5.9 If, in the course of their work on a project, an architect or professional engineer becomes aware of a decision or an action taken by the employer or client against the architect's or professional engineer's advice, which violates applicable laws and regulations and which will, in the architect's or professional engineer's judgment, have a material adverse effect on the safety to the public of the finished project, the architect or professional engineer shall advise the employer or the client of the violation and request reconsideration of the decision or action. In the event the employer or client does not reverse or alter the decision or action in order to bring it into conformity with applicable laws, the architect or professional engineer shall:

5.5.9.1 Report the decision or action to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations;

5.5.9.2 Refuse to consent to the decision or action; and

5.5.9.3 In circumstances where the architect or professional engineer reasonably believes that other such decisions or actions will be taken notwithstanding their objection, terminate their services with reference to the project.

Chapter 3

Ethical and Disciplinary Case Studies

As explained in Chapter 2, we, as Professional Engineers, are expected to take reasonable precautions or care in the practice of our engineering profession as we must hold paramount the safety, health and welfare of the public. So, what happens when we fall short of our professional responsibilities for which we were entrusted by the public when we earned our honorable title of “Professional Engineer”?

The following ethical and disciplinary case studies were extracted from the website of the Nebraska Board of Engineers and Architects. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Board.

Case No. 15.04 & 16.06: Unlicensed Practice of Eng. and Offer to Practice

Summary: The Board learned that the Respondent and his organization, Standard Bridge Company, LLC, had been advertising and offering engineering services for predesigned and prefabricated bridges. Complaint 15.04 involved allegations that engineering services were being solicited directly to Nebraska political subdivisions and through a website. Complaint 16.06 involved allegations that the advertising had shifted to various video-sharing websites.

Action: The Board held an administrative hearing on the matter and imposed a \$10,000 civil penalty and issued a cease and desist order. The Board then filed an Action for Enforcement in the District Court of Lancaster County, Nebraska per Board Rule 8.5.1. The Court entered judgment in favor of the Board and upheld the civil penalty and cease and desist order.

Case No. 16.03: Non-Compliance with The Code of Practice

Summary: A complaint was filed by the Nebraska Department of Environmental Quality against the Respondent, a PE based in North Dakota, alleging noncompliance with the Code of Practice. The alleged noncompliance arose in relation to discrepancies and contradictions between certification forms submitted to NDEQ and the approved construction and operating permit for a livestock waste facility.

Action: In lieu of a formal hearing, the Respondent agreed to enter a Settlement Agreement with the Board to resolve the allegations. Pursuant to the Settlement Agreement, the Board imposed a \$1,000 penalty.

Case No. 15.17: Inappropriate Use of the Engineering Seal

Summary: The Board's Compliance Officer reviewed plans for a swimming pool in eastern Nebraska submitted to a city's building department for permitting. Two professional engineers sealed work that appeared to constitute the architecture. The organization for which these P.E.s worked also did not have a Certificate of Authorization.

Action: The organization applied for, and was granted, a Certificate of Authorization to practice in Nebraska. It was determined that the project was exempt from the Engineers and Architects Regulation Act and therefore did not require plans to be sealed. However, the Board issued a cautionary letter to the organization's Engineer in Responsible Charge that the practice of engineering does not include the practice of architecture, and that professional engineers should not place their seal on exempt architectural work.

Case No. 15.02: License Revocation by Other States

Summary: The Board initiated a complaint against the Respondent, a PE based in Missouri, after the licensee disclosed his PE license in Missouri had been revoked. The Missouri action was based upon the finding that the Respondent had practiced architecture without a license, then later violated the probation terms for that violation. The Respondent was further found to have practiced engineering disciplines in which the probationary terms prohibited him from practicing on three separate projects.

Action: A formal disciplinary hearing was held during the March 20, 2015 Board meeting. Based upon the disciplinary action taken in Missouri for actions that would also have been grounds for disciplinary action in Nebraska, the Board determined that Rule 5.4.3.1 was appropriate and unanimously voted to revoke the Respondent's Nebraska PE license.

Case No. 13.02: Failure to Fully Disclose

Summary: A complaint was initiated by the Board upon discovery that a professional engineer had failed to disclose numerous prior disciplinary actions taken by other state licensing boards in connection with his Nebraska license renewal. The actions included both license revocations and voluntary license relinquishments.

Action: The Board reviewed the extensive history of disciplinary actions compiled by Board staff and requested that the Texas-based licensee surrender his license to practice engineering in Nebraska. The licensee complied, and the Board accepted his license surrender.

Appendix A

References

Nebraska Board of Engineers and Architects
<https://ea.nebraska.gov/about-us>

Nebraska Engineers and Architects Regulation Act
<https://ea.nebraska.gov/ea-act>

Nebraska Engineers and Architects Regulation Act Handbook
<https://ea.nebraska.gov/sites/ea.nebraska.gov/files/doc/EAHandbook2017.pdf>

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<https://ea.nebraska.gov/sites/ea.nebraska.gov/files/doc/NewsletterFall2017.pdf>

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https://ea.nebraska.gov/files/doc/SP_2016_Newsletter.pdf

Nebraska Board Newsletter Spring 2015
<https://ea.nebraska.gov/sites/ea.nebraska.gov/files/doc/S2015web.pdf>

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<https://ea.nebraska.gov/sites/ea.nebraska.gov/files/doc/fall13.pdf>