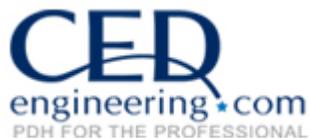

Engineering Laws, Rules and Ethics for Texas Professional Engineers

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Chapter 1

Overview of Texas Engineering Board Regulations

Texas Board of Professional Engineers

The Texas Board of Professional Engineers (TBPE) is the primary government body that regulates the practice of engineering within the State of Texas. The TBPE consists of nine members as follows: six licensed professional engineers and three public members. All nine members are appointed by the Governor (with the advice and consent of the senate) for staggered six year terms.

The TBPE's role in the protection of the public is to enforce the Texas Engineering Practice Act. Under this law, the TBPE is responsible for reviewing applications, administering examinations, licensing qualified applicants, and regulating the practice of engineering throughout the state.

The TBPE has the authority to implement provisions of Title 6, Subtitle A, Chapter 1001 "Engineer" of the Texas Engineering Practice Act and Title 22, Part 6 of the Texas Administrative Code, "Rules Concerning the Practice of Engineering and Professional Engineering Licensure".

Texas Engineering Practice Act

The Texas Engineering Practice Act is part of the Texas Occupations Code which is a collection of state laws organized by subject area into a code made up of titles, subtitles and chapters. The Code states each law followed by the history of the law which indicates when it was originally filed and subsequent effective dates of enactment. The Texas Legislature found that it was necessary in the interest of public health and safety to regulate the practice of engineering in the State of Texas and thus created Title 6, Subtitle A, "Regulation of Engineering and Related Practices", Chapter 1001, "Engineer". The Texas Engineering Practice Act was created by laws that adopt, amend, or repeal statutory material.

Texas Administrative Code

The Texas Administrative Code is a compilation of the rules and regulations of the Texas regulatory agencies. It is organized by titles with each title number representing a department, commission, board or other agency. The Code states the rule as well as the implementation and history of the rule. At the end of each rule, a history note is located which indicates when the rule has been modified, renumbered, or repealed. Title 22, Part 6, "Rules Concerning the Practice of Engineering and Professional Engineering Licensure" of the Texas Administrative Code pertains exclusively to the Texas Board of Professional Engineers and its functions with respect to the practice of engineering.

Pertinent sections of Title 22, Part 6, which relate to the code of professional conduct and responsibility, are presented in Chapter 2 below.

TBPE Disciplinary Authority

On a determination that a ground for disciplinary action exists under Section 1001.452, the TBPE has the authority to deny an application for a license; revoke, suspend, or refuse to renew a license; probate the suspension of a license; or formally or informally reprimand a license holder.

The TBPE has also the authority to impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter. The amount of an administrative penalty may not exceed \$3,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

In addition to any other action authorized by law, the TBPE has the authority to bring an action in the board's name to enjoin a person from violating this chapter or a board rule. An action under this section must be brought in a district court of Travis County.

The attorney general shall act as legal advisor of the TBPE by providing legal assistance to the TBPE as necessary to enforce this chapter and make it effective; and represent the TBPE in an action brought to enforce this chapter.

The disciplinary process of the TBPE is illustrated in Chapter 3 below. Several disciplinary cases, which were selected at random to further illustrate the disciplinary actions taken by the TBPE, are presented in Chapter 4 below. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the TBPE.

Chapter 2

TX Administrative Code - Title 22, Part 6

Title 22, Part 6: Texas Board of Professional Engineers

The following are excerpts from Title 22, Part 6 of the Texas Administrative Code. If you wish to review the entire Part, please visit the website of the Texas Board at:

<http://www.tbpe.state.tx.us/downloads/law&rules.pdf>

CHAPTER 137: COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A: INDIVIDUAL AND ENGINEER COMPLIANCE

§137.17 Continuing Education Program

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH) - A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour - Credit for course in ABET-approved program or other related college course.

(4) Course/Activity - Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional engineering, or review of the Texas Engineering Practice Act and Board Rules. PDH units carried forward may not be counted to meet the professional ethics requirement.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 14 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization;

(C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed study.

(10) Active participation in educational outreach activities involving K-12 or higher education students.

(g) All activities described in §137.17(f) of this title shall be relevant to the practice of a technical profession and may include educational, technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

(1) 1 College or unit semester hour--15 PDH

(2) 1 College or unit quarter hour--10 PDH

(3) 1 Continuing Education Unit--10 PDH

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH

(5) 1 Hour of professional development through self-directed study--1 PDH (Not to exceed 5 PDH)

(6) Each published paper, article, or book--10 PDH

(7) Active participation in professional or technical society, association, agency, or organization--1 PDH (Not to exceed 5 PDH per organization)

(8) Active participation in educational outreach activities--1 PDH (Not to exceed 3 PDH)

(9) Each patent issued--15 PDH

(10) Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(i) Determination of Credit

(1) The board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or serve in other official positions. PDH credits are not earned until the end

of each year of service is completed.

(8) Teaching credit is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(k) The license holder must certify that CEP requirements have been satisfied for that renewal year with the renewal application and fee.

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of engineering; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1)-(4) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) License holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License holders who list their status as "Inactive" and who further certify that they are not providing professional engineering services in Texas shall be exempt from the professional development hours required.

(o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units and submitting copies of CEP records demonstrating compliance to the board or its authorized representative for verification purposes. If the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If an license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CEP reporting requirements as listed in this section is a violation of board rules and shall be subject to sanctions.

(3) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

Source Note: The provisions of this §137.17 amended to be effective September 9, 2012.

SUBCHAPTER B: SEALING REQUIREMENTS

§137.31 Seal Specifications

(a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board for board records.

(b) Physical and electronic seals shall be of the design illustrated in this section and shall be no larger than two inches. Regardless of seal size the engineer's name and number must be clearly legible.

(c) All physical seals obtained and used by license holders shall be capable of leaving a permanent ink image or permanent impression of the seal attached to the engineering work.



(d) All seals obtained and used by license holders shall contain any given name, commonly accepted variation of the given name, or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination. The name can be displayed on the seal using all uppercase letters such as "LESLIE H. DOE" or using the standard combination of upper and lowercase letters, such as "Leslie H. Doe".

(e) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing an engineering work, the engineer may utilize the designation "P.E" or other terms as described in §137.1 of this chapter (relating to License Holder Designations).

(g) This section does not prevent the reproduction of sealed and signed, original works for distribution.

Source Note: The provisions of this §137.31 amended to be effective December 25, 2012.

§137.33 Sealing Procedures

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.

(b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.

(c) When a license holder reviews and elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

- (1) individually sealed by the license holder; or
- (2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

(d) License holders shall take reasonable steps to ensure the security of their physical or

electronic seals and electronic signatures. For electronic seals and electronic signatures, the engineer must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the engineer will immediately give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or binding, instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(f) License holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their engineering work before such work is released from their control.

(1) The signature and date shall not obscure the engineer's name or license number in the seal.

(2) Engineering work required to bear a seal and signature includes the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding.

(3) All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion.

(h) Work performed by more than one license holder shall be sealed in a manner such that all engineering can be clearly attributed to the responsible license holder or license holders. When sealing plans or documents on which two or more license holders have worked, the seal and signature of each license holder shall be placed on the plan or document with a notation describing the work done under each license holder's responsible charge.

(i) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(j) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to the client by the first license holder;

(2) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(j) A local authority may require an original seal and/or signature on reproduced documents.

(k) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the

document. A license holder is not required to use a seal if the project is to be constructed or used in another state or country.

(l) An engineer may securely transmit his or her final version of engineering work electronically provided that work bears the engineer's seal and uses one of the techniques described in §137.35(a) of this chapter (relating to Electronic Seals and Electronic Signatures) and must employ reasonable security measures to make the documents unalterable. Electronic correspondence of this type may be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms described in §137.1 of this chapter (relating to License Holder Designations).

(m) A license holder is not required to use a seal for a project for which the license holder is not required to hold a license under an exemption set forth under the Act, Texas Occupation Code §§1001.051 - 1001.066.

(n) All engineering documents released, issued, or submitted by a licensee, including preliminary documents, shall clearly indicate the firm name and registration number of the engineering firm by which the engineer is employed.

(1) If the engineer is employed by a local, State, or Federal Government agency, then only the name of the agency shall be required.

(2) If the engineer is exempt from sealing a document under subsection (m) of this section, but elects to seal a document, then only the name of the employer shall be required.

Source Note: The provisions of this §137.33 amended to be effective December 21, 2008.

§137.35 Electronic Seals and Electronic Signatures

(a) Licensed professional engineers shall maintain the security of their electronic seals and electronic signatures. The following methods are allowed:

(1) Licensed professional engineers may electronically copy their original hard copy work that bears their seal, original signature, and date and transmit this work in a secure electronic format.

(2) An engineer may create an electronic seal and electronic signature for use in transmitting electronically formatted engineering work, regardless of whether the work was originally in hard copy or electronic format.

(b) As an alternative to electronic sealing and electronic signatures, engineers shall affix their original seals and signatures and date to their engineering work as specified in §137.33(f) of this chapter (relating to Sealing Procedures).

Source Note: The provisions of this §137.35 amended to be effective April 27, 2008.

§137.37 Sealing Misconduct

(a) A license holder is guilty of misconduct and subject to disciplinary action if the license holder:

(1) knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the license is inactive or has been revoked, suspended, or has expired.

(3) alters a sealed document without proper notification to the responsible license holder.

(4) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular engineering work.

(b) A person not licensed by the board may not use, cause to be used, affix or cause to be affixed or in any other manner, regardless of the means, attach or in any way depict an

engineering seal or a representation of an engineering seal without the express permission by the licensee responsible for the project or the specific engineering work in question.

Source Note: The provisions of this §137.37 amended to be effective December 25, 2012.

SUBCHAPTER C: PROFESSIONAL CONDUCT AND ETHICS

§137.51 General Practice

(a) In order to safeguard, life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the rules relating to professional conduct in this title shall be binding on every person holding a license authorized to offer or perform engineering services in Texas.

(b) License holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.

(c) A license holder shall respond to the board in writing to all written requests for information regarding all inquiries under the jurisdiction of the board within 21 days of receipt or by the date specified in board correspondence. A license holder shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct and will subject the license holder to any of the penalties provided under §1001.451(2), (3), or (4) and §1001.502 of the Act.

(d) Any license holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §137.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions available to the board. Professional engineers shall perform or directly supervise the engineering work of any subordinates as characterized in §131.81(10) of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance with §137.77 of this chapter (relating to Firm Registration Compliance) in a manner that could enable such firm to offer or perform professional engineering services.

(e) A licensed professional engineer may offer or perform engineering services on a full or part-time basis as a firm (including a sole practitioner) or other business entity if registered pursuant to the requirements of Chapter 135 of this title (Relating to Firm Registration).

Source Note: The provisions of this §137.51 amended to be effective December 11, 2011.

§137.53 Engineer Standards of Compliance with Professional Services Procurement Act

(a) A licensed engineer shall not submit or request, orally or in writing, a competitive bid to perform professional engineering services for a governmental entity unless specifically authorized by state law and shall report to the board any requests from governmental entities and/or their representatives that request a bid or cost and/or pricing information or any other information from which pricing or cost can be derived prior to selection based on demonstrated competence and qualifications to perform the services.

(b) For the purposes of this section, competitive bidding to perform engineering services includes, but is not limited to, the submission of any monetary cost information in the initial step of selecting qualified engineers. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract at a fair and reasonable cost.

(c) This section does not prohibit competitive bidding in the private sector.

Source Note: The provisions of this §137.53 amended to be effective June 4, 2007.

§137.55 Engineers Shall Protect the Public

(a) Engineers shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder.

(b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.

(c) Engineers shall first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.

(d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

Source Note: The provisions of this §137.55 amended to be effective May 20, 2004.

§137.57 Engineers Shall be Objective and Truthful

(a) Engineers shall issue statements only in an objective and truthful manner. Engineers should strive to make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.

(b) The issuance of oral or written assertions in the practice of engineering shall not be:

- (1) fraudulent,
- (2) deceitful, or
- (3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(c) The engineer shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

Source Note: The provisions of this §137.57 amended to be effective December 21, 2008.

§137.59 Engineers' Actions Shall Be Competent

(a) Engineers shall practice only in their areas of competence.

(b) The engineer shall not perform any engineering assignment for which the engineer is

not qualified by education or experience to perform adequately and competently. However, an engineer may accept an assignment which includes phases outside of the engineer's area of competence if those other phases are performed by qualified licensed professionals, consultants, associates, or employees.

(c) The engineer shall not express an engineering opinion in deposition or before a court, administrative agency, or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion. Engineering opinions which are rendered as expert testimony and contain quantitative values shall be supported by adequate modeling or analysis of the phenomena described.

Source Note: The provisions of this §137.59 amended to be effective September 4, 2006.

§137.61 Engineers Shall Maintain Confidentiality of Clients

(a) The engineer may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public.

(b) The engineer shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.

(c) The engineer shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the engineer's employees and associates.

Source Note: The provisions of this §137.61 amended to be effective May 20, 2004.

§137.63 Engineers' Responsibility to the Profession

(a) Engineers shall engage in professional and business activities in an honest and ethical manner. Engineers should strive to promote responsibility, commitment, and ethics both in the education and practice phases of engineering. They should attempt to enhance society's awareness of engineers' responsibilities to the public and encourage the communication of these principles of ethical conduct among engineers.

(b) The engineer shall:

(1) endeavor to meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, ordinances or standards in the performance of engineering services;

(2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services;

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules.

(4) act as faithful agent for their employers or clients;

(5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work;

or conduct that harasses or intimidates another party; and

- (6) practice engineering in a careful and diligent manner.
- (c) The engineer shall not:
- (1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of engineering;
 - (2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;
 - (3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;
 - (4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;
 - (5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment; or
 - (6) solicit professional employment in any false or misleading advertising.

Source Note: The provisions of this §137.63 amended to be effective December 21, 2008.

§137.65 Action in Another Jurisdiction

(a) The engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas.

(b) Any disciplinary actions taken by another jurisdiction on a matter which would constitute a violation of the Texas Engineering Practice Act or board rules shall be sufficient cause for disciplinary action by this board. A certified copy of the board Order or Final Action from another jurisdiction shall be sufficient evidence to take disciplinary action in this state.

(a) Any complaint, referral or report that a Texas licensed professional engineer performing engineering related to Texas Occupations Code, §1001.068 in another state may be subject to disciplinary action by this board, if after investigation it is determined that the engineering work done in that other state was inadequate, deficient, incorrect or violated that state's law or rules regarding the practice of engineering.

Source Note: The provisions of this §137.65 amended to be effective December 25, 2012.

CHAPTER 139: ENFORCEMENT

SUBCHAPTER C: ENFORCEMENT PROCEEDINGS

§139.31 Enforcement Actions for Violations of the Act

(a) Under the authority and provisions of §1001.201, §1001.202, and Subchapters J, K, and L of the Texas Engineering Practice Act (Act), the board shall take action against a person or entity, upon determination that censure is warranted, for a violation of the Act and/or board rules. An action may be composed of one or more of the following:

- (1) revocation of a license;
- (2) suspension of a license;
- (3) probation of a suspended license;
- (4) refusal to renew a license;
- (5) issuance of a formal or informal reprimand;

- (6) cease and desist;
 - (7) voluntary compliance agreement;
 - (8) emergency suspension; or
 - (9) assessment of an administrative penalty under Subchapter K the Act.
- (b) All actions issued by the board will take the form of a Board Order and shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all enforcement actions shall be published in the board newsletter and on the board website, may be issued in a press release, and shall be transmitted to the National Council of Examiners for Engineering and Surveying.
- (c) Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity, hereafter referred to in this section as "respondent," by personal service or by certified or registered mail of the alleged violation. The respondent shall be afforded an opportunity to present rebuttals, arguments and evidence to the board prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing.

Source Note: The provisions of this §139.31 amended to be effective December 17, 2013.

§139.33 Informal Proceedings

If, after evaluation of the respondent's response a violation appears evident, the executive director shall initiate enforcement action. Before proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.

(1) The executive director may also offer the respondent a Consent Order that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraphs (2) or (3) of this subsection will be followed.

(2) The respondent may request an informal conference to present additional evidence and discuss details of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint an informal conference committee composed of one board member or board representative, the executive director or executive director's designee, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the details of the allegations and shall recommend:

- (A) dismissal;
- (B) a proposal for an Agreed Board Order for disciplinary actions that will be presented to the board for acceptance or rejection; or
- (C) scheduling of a formal hearing.

(3) Any board action under this subsection which is not informally disposed by Agreed or Consent Order, will be considered a contested case and will be handled in accordance with applicable law and board rules.

Source Note: The provisions of this §139.33 amended to be effective December 21, 2008.

§139.35 Sanctions and Penalties

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. The maximum

administrative penalty shall be \$3000 per violation. Pursuant to § 1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of prior violations of the respondent;
- (3) the severity of penalty necessary to deter future violations;
- (4) efforts or resistance to efforts to correct the violations;
- (5) the economic harm to property or the environment caused by the violation; and
- (6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. Note: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list 'suspension', all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTIONS
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/\$5,000.00
	Failure to exercise care and diligence in the practice of engineering	§137.55(b); § 137.63(b)(6)	1 year suspension/ \$2,500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/ \$5,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/ \$5,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/\$5,000.00
Licensing	Fraud or deceit in obtaining a license	§1001.452(2); §1001.453	Revocation/\$5,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year suspension/ \$2,500.00
	Enter into a business relationship which is in violation of 137.77(Firm Compliance)	§137.51(d)	1 year suspension/ \$1,500.00
Improper use of Seal	Failure to safeguard seal and/or electronic signature	§137.33(d)	Reprimand/\$1,500.00
	Failure to sign, seal, date, or include firm identification on work	§137.33(e), (f), (h), (n); §137.35(a), (b)	Reprimand/\$750.00
	Alter work of another	§137.33(i); §137.37(3)	1 year suspension/ \$2,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/\$1,500.00
	Practice or affix seal with expired or inactive license	§137.13(h); §137.37(2)	1 year suspension/ \$750.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/\$5,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year suspension/ \$2,500.00
	Sealing work endangering the public	§137.37(1)	Revocation/\$5,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/\$750.00
	Improper use of standards	§137.33(c)	Reprimand/\$750.00

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTIONS
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year suspension/ \$4,000.00
	Failure to follow TDI qualified windstorm inspection procedures.	§1001.652; §137.19; §137.63(b)(1)	Reprimand/\$1,500.00
	Failure to design a structure associated with windstorm insurance that complies with cited windstorm code design criteria.	§1001.652; §1001.653; §137.19; §137.63(b)(1)	1 year suspension / \$3,000.00 / Roster Removal
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful	§137.57(a); §137.57 (b)(1) or (2)	2 year suspension/ \$4,000.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a); §137.57(b)(3)	1 year suspension/ \$1,500.00
	Conflict of interest	§137.57(c), (d)	2 year suspension/ \$4,000.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year suspension/ \$4,000.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year suspension/ \$4,000.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year suspension/ \$4,000.00
	Offer or practice engineering while license is expired or inactive	§137.7(a); §137.13(g)	1 year suspension/ \$750.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year suspension/ \$2,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/\$2,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year suspension/ \$2,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year suspension/ \$2,500.00
	Aiding and abetting unlicensed practice or other assistance	§137.63(b)(3); §137.63(c)(1)	3 year suspension/ \$5,000.00
	Failure to report violations of others	§137.55(c)	Reprimand/\$2,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/\$2,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/\$2,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year suspension/ \$2,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand/\$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension/ \$4,000.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in here if action had occurred in Texas
Failure to provide plans and/or specs to TDLR/RAS for assessment within 20 days of issuance.	§1001.452(5); §137.63(b)(1) and (2)	Informal Reprimand/ \$750	
Administrative	Failure to return seal imprint and/or portrait	§133.97(e), (f); §137.31(a)	Reprimand/\$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/\$170.00
	Failure to respond to board communications	§137.51(c)	Reprimand/\$750.00
	Failure to include “inactive” or “retired” representation with title while in inactive status	§137.13(f)	Reprimand/\$500.00

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules. Note: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

VIOLATION	CITATION	SUGGESTED SANCTIONS	
		First Occurrence	Subsequent Occurrences
Use of "Engineer" title	§1001.004(c)(2)(B)(C); §1001.301(b)(1)	Voluntary compliance Notice to Cease and Desist	Injunctive/Criminal and \$1,500.00
Use of "P.E." designation, or claim to be a "Professional Engineer"	§1001.301(b)(2)-(6), (c), (e)	Notice to Cease and Desist and \$1,500.00	Injunctive/ Criminal and \$5,000.00
Offer or attempt to practice engineering (e.g., through solicitation, proposal, contract, etc.)	§1001.004(c)(2)(A); §1001.301(a), (c)-(e); §1001.405	Notice to Cease and Desist and \$1,500.00	Injunctive/ Criminal and \$5,000
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)	§ 1001.405(e)	Voluntary compliance	Cease and Desist and \$750
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name	§ 1001.405(e)	Voluntary compliance	Injunctive/Criminal and \$5,000.00
Unlicensed practice of engineering	§1001.004(c)(2)(A); §1001.301(a), (c)-(e); §1001.405; §137.51(e); §137.77(a)	Notice to Cease and Desist and \$2,000.00	Injunctive/Criminal and \$5,000.00

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm registration. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

VIOLATION	CITATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE
Offer and perform consulting engineering services without being registered	§1001.405; §137.77(a), (e)	Voluntary Compliance / \$250.00	\$500.00	Cease and Desist / \$1,500.00
Offer and perform consulting engineering services while registration was expired	§1001.405; §137.77(d), (e)	\$500.00	\$750.00	\$2,000.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§1001.405; §137.77(a), (e)	\$100.00	\$500.00	Cease and Desist / \$1,500.00
Failure to include firm name and registration number on engineering work	§137.77(h)	Voluntary Compliance	\$500.00	\$1,500.00
Failure to notify board of firm registration record modification	§137.73	Voluntary Compliance	\$250.00	\$750.00

(e) The following is a table of suggested sanctions that may be imposed against a governmental entity and/or its representative for violations of the Act or board rules:

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SECOND OCCURRENCE
Failure to engage a professional engineer in the construction of any public work involving professional engineering	§1001.407(1)	Voluntary Compliance	Cease and Desist / \$5,000.00
Accepting engineering plans, specifications and estimates that were not prepared by a professional engineer	§1001.402	Voluntary Compliance	Cease and Desist / \$5,000.00
Failure to ensure that the engineering construction is performed under the direct supervision of a professional engineer	§1001.407(2)	Voluntary Compliance	Cease and Desist / \$5,000.00

Source Note: The provisions of this §139.35 amended to be effective December 17, 2013.

Chapter 3

Disciplinary Process

Investigative Process

Once a complaint against a person is made, the TBPE assigns a case number and generates a folder. The TBPE also assigns an Investigator who reviews the complaint for completeness and whether TBPE has jurisdiction. The Investigator notifies Complainant of receipt. Investigator gathers information and interacts with appropriate parties to determine what the violation(s) is (are) and generates an internal memo with a summary of the complaint and recommended action, be it dismissal or possible sanctions against the individual, firm, or entity.

The case and recommendation is then reviewed independently by the Supervising Investigator (SI), the Director of Compliance & Enforcement (DC&E), the Deputy Executive Director (DED) and the Executive Director (ED). The Executive Director has final authority on how to proceed.

If the ED recommends dismissal, then a letter of notification is sent to the Complainant and 30 days are offered to allow Complainant to provide any additional information that might allow for re-review. If no additional information is provided in the 30 days, then letters of dismissal are sent to both the Complainant and the Respondent. If additional information is provided, the Investigator reviews and provides recommendations and again distributes to the SI, DC&E, DED, and ED for re-review.

If the case is recommended for further action, then a letter is sent to the Respondent stating the existence of the complaint, source of the complaint, the potential violation(s), citing of the Law and/or Rules violated, and a request for a rebuttal of the complaint. Typically three weeks is allowed for a response.

Charges and Consent Order

Upon receipt of the rebuttal, the original Investigator reviews the provided information; determines if the case should be recommended for dismissal or identify violations and propose sanctions. The SI and the DC&E review the recommendation and if a sanction is recommended, the Director determines a potential administrative penalty with justification for DED and ED review. The ED has final authority of dismissal or sanction with recommended administrative penalty.

If recommended to be dismissed, then a letter of notification is sent to the Complainant and 30 days are offered to allow complainant to provide any additional information that might allow for re-review. If no additional information is provided in the 30 days, then letters of dismissal are sent to both the Complainant and the Respondent. If additional information is provided the investigator reviews and provides recommendations and again distributes to the SI, DC&E, DED, and ED for re-review. If Respondent is asked to Cease and Desist, is

sanctioned and/or reprimanded, then a letter of notification is made and a Consent Order is offered for signature. (Note: For more complex, extended case investigations the Complainant will be notified at least quarterly of current status of the complaint.)

Administrative Hearing and Penalties

If the Respondent signs and returns the Consent Order, it is then reviewed and approved/denied by the Board at the next quarterly Board meeting. If the Respondent refuses to sign the Consent Order, he must request an informal conference or it will be referred to the State Office of Administrative Hearings (SOAH) for a formal resolution. The Respondent would be scheduled for a meeting before the Informal Conference Committee, which is composed of one Board member, the Executive Director, and the Attorney General Representative acting as the Board's legal counsel. The committee recommends either dismissal, a sanction in the form of an Agreed Board Order, or recommends the case be referred to SOAH.

Once the Respondent signs and returns the Agreed Board Order, it is then reviewed and approved/denied by the Board at the next quarterly Board meeting. The Respondent is then notified of Board action and informed of sanction and/or administrative penalty and allowed 30 days time to respond.

Complainant is notified by letter of final resolution of the case.

Chapter 4

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 disciplinary cases were extracted from the website of the TBPE. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the TBPE.

CASE NO. D-36015

Case Review:

The Respondent practiced engineering while his Texas professional engineer license was expired. His Texas professional engineer license expired and was not renewed for four months during which, he signed and sealed engineering construction plans. The Respondent aided and abetted an inactive engineering firm in the illegal practice of engineering. The Respondent failed to act as faithful agent in that he misrepresented to the client for the Project he was legally able to offer and provide engineering services.

Act/Rule Violated:

Act - 1001.401(c) and 1001.405(b)(1), (e)(1), & (e)(3)

Rule - 137.7(a), 137.37(a)(2), 137.63(a), (b)(4), (b)(6), & (c)(1), and 137.77(a) & (d)–(e)

Resolution:

- » Two year probated suspension
- » Assessment of \$4,420.00 administrative penalty
- » Successful completion of an engineering ethics

CASE NO. B-35680

Case Review:

The Respondent is not nor has he ever been licensed in Texas as a professional engineer. He is the owner of an 1880 era masonry building in the City of McKinney (City), Texas, which is in need of repairs due to a crack in the masonry wall. City building officials informed the Respondent that because the crack may be a "structural separation", he would need an engineer's report regarding the repair. The Respondent then practiced engineering in Texas by submitting to the City an "engineering type report" dated initially December 5, 2014 and then re-dated December 18, 2014, which he signed as "private engineer" after his name on the report.

Act/Rule Violated:

Act - 1001.004(c)(2)(A) and 1001.301(a)-(c)

Resolution:

- » Cease and desist order
- » Assessment of \$3,900.00 administrative penalty
- » Assessment of \$359.09 for court and investigative costs

CASE NO. D-36078

Case Review:

The Respondent offered and practiced engineering while his professional engineer's license was inactive. The Respondent misrepresented his license status and failed to display his professional engineer license as inactive on correspondence. The Respondent failed to practice engineering in a careful and diligent manner.

Act/Rule Violated:

Rule - 137.13(a), (f), & (h), 137.57(b)(3), and 137.63(b)(6)

Resolution:

- » Formal reprimand
- » One year probated suspension

CASE NO. D-35605

Case Review:

The Respondent's criminal history record check revealed two misdemeanor convictions and one felony conviction; however, he never notified the Board in writing of any of the aforementioned criminal convictions in violation of Board Rule 22 TAC §137.5(c). The Respondent failed to conduct engineering in a professional, honest and ethical manner as demonstrated by the felony conviction, failed to report the convictions to the Board, and provided false information on his license renewals.

Act/Rule Violated:

Rule - 137.5(c)

Resolution:

- » Voluntary suspension of Texas engineer's license
- » Subsequent revocation of Texas engineer's license

CASE NO. D-35587

Case Review:

The Respondent used the designation "P.E." after his name and performed engineering work during a time when his license was expired. Because he no longer desired to practice engineering in Texas and to resolve a pending disciplinary case, the Respondent signed a Voluntary Surrender of his license which resulted in the revocation of his license.

Act/Rule Violated:

Act - 1001.004(c)(2) (A) & (B) and 1001.301(a)

Rule - 137.7(a) and 137.63(a)

Resolution:

- » Revocation of Texas engineer's license

CASE NO. D-35267

Case Review

The Respondent falsely certified that he had completed the required Continuing Education credits on his last license renewal when he had not done so and failed to timely respond to Board inquiries. Because he no longer desired to practice engineering in Texas and to resolve a pending disciplinary case, the Respondent signed a Voluntary Surrender of his license which resulted in the revocation of his license.

Act/Rule Violated:

Rule - 137.17(c), (m) & (p) (2) & (3), and 137.51 (c).

Resolution:

» Revocation of Texas engineer's license

CASE NO. D-35267

Case Review

The Respondent, during a time when he was licensed to practice engineering in Texas, prepared engineering design work for the Dallas Cowboys Training Facility which subsequently collapsed during a violent weather event severely injuring several Dallas Cowboys personnel. The Board alleged several deficiencies in the engineering design, all of which the Respondent vigorously disputed. However, without admitting any wrongdoing, but desiring to resolve and end this disputed matter, the Respondent and the Board agreed to the terms and entry of an Agreed Board Order.

Act/Rule Violated:

Rule - 137.55 (b), 137.57 (b) (3), 137.63 (b) (1) and 137.63 (b) (6)

Resolution:

- » Assessment of 3,000.00 for investigation and prosecution costs
- » Assessment of a \$50,000.00 administrative penalty should the Respondent be found to have violated any state's engineering rules or standards which involve the health, welfare or safety of such state's public during the ten year period following the entry of the Agreed Board Order
- » Agreement not to apply for licensure in Texas for five years following the entry of the Agreed Board Order

Appendix A

References

Texas Board of Professional Engineers
<http://engineers.texas.gov/index.htm>

Texas Engineering Practice Act and Rules Concerning the Practice of Engineering and Professional Engineering Licensure
<http://www.tbpe.state.tx.us/downloads/law&rules.pdf>

Texas Board of Professional Engineers Complaint/Investigative Process
http://www.tbpe.state.tx.us/complaint_process.htm

Texas Board of Professional Engineers Disciplinary Actions
<http://www.tbpe.state.tx.us/disciplinary.htm>