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Engineering Ethics for New Jersey Professional Engineers

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Chapter 1

Overview of New Jersey Engineering Board Regulations

New Jersey State Board of Professional Engineers and Land Surveyors

The New Jersey State Board for Professional Engineers and Land Surveyors (Board) was established to regulate the practice, licensure and registration of engineers and land surveyors in the State of New Jersey in order to safeguard life, health and property and promote the general welfare. The Board reviews applications, administers examinations, licenses qualified applicants, and regulates the professional practice of licensees throughout the state. The Board has the power to adopt rules, set standards for licensure, adopt mandatory standards of professional conduct and ethics, and investigate and discipline unauthorized, negligent, unethical or incompetent practice.

The Board consists of ten members, two of whom are public members and one of whom is a State executive department member appointed pursuant to the provisions of P.L. 1971, c. 60 (C. 45:1-2.1 et seq.). Each of the remaining seven members is appointed by the Governor of the State of New Jersey, with the advice and consent of the Senate. All members of the Board are appointed for a term of five years.

The Board has the authority to implement provisions of the New Jersey Statutes: Title 45, Chapter 8, "Professional Engineer and Land Surveyor Laws" and the New Jersey Regulations, Title 13, Chapter 40, "State Board for Professional Engineers and Land Surveyors".

New Jersey Regulations (Rules)

The New Jersey Regulations are a compilation of the rules and regulations of the New Jersey regulatory agencies and it is organized by titles and chapters with each chapter number representing a department, commission, board or other agency. Chapter 40 of the regulations was created to regulate the practice of engineering and land surveying in the State of New Jersey. The Board regulations state the rule followed by the history of the rule which indicates when it was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. It was last updated on November 16, 2015.

Study Question 1:

List the two regulations that govern the practice of engineering in the State of New Jersey.

Pertinent sections of Chapter 40, which relate to the code of professional conduct and responsibility, are presented in Chapter 2 below.

New Jersey Statutes (Laws)

The New Jersey Statutes are a collection of state laws organized by subject area into a code made up of titles and chapters. Title 45, Chapter 8, "Professional Engineer and Land Surveyor Laws" was created by the New Jersey General Assembly in the interest of public health and safety to regulate the practice of engineering in the State of New Jersey. It was created by laws that adopt, amend, or repeal statutory material. The New Jersey Statutes state the law followed by the history of the law which indicates when it was originally filed and subsequent effective dates of enactment. It was last updated on June 30, 2017.

Pertinent sections of Title 45, Chapter 8, which relate to the code of professional conduct and responsibility, are presented in Chapter 3 below.

Disciplinary Process

The New Jersey State Board of Professional Engineers and Land Surveyors is charged with the duty of issuing certificates of registration to those professional engineers and land surveyors it has determined to be qualified. It has also the authority and responsibility to revoke or suspend these certificates when licensees are convicted with charges of gross incompetence or professional misconduct.

When a complaint is received by the Board, a copy of the complaint is forwarded to the licensee with a cover letter requiring a detailed written response to the allegations in the complaint. Once that response is received, it is reviewed by the Board and disposition may be recommended. If the Board needs additional information, the licensee may be required to appear to answer questions concerning the complaint.

If the complaint involves a dispute over fees, the Board has limited jurisdiction over fees charged by professionals. If the Board determines that there is insufficient basis to pursue disciplinary action, but that the complaint involves a fee dispute, the complaint may be referred to the Alternative Dispute Resolution (ADR) Unit of the Division of Consumer Affairs. The ADR, which is a free mediation service, would assist in resolving such matters.

If the Board finds sufficient basis that the licensee violated State laws or regulations, it will take formal action at which point the matter is referred to the office of the Attorney General. In that case, formal charges may be filed against the licensee and the licensee will be given an opportunity to defend himself or herself. This process can take a considerable period of time.

Several disciplinary cases, presented in Chapter 4 below, were randomly selected to further illustrate the disciplinary actions taken by the Board. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Board.

Chapter 2

NJ Regulations - Prohibited Acts; Supervision

TITLE 13, CHAPTER 40: STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

The following are excerpts from Title 13, Chapter 40 of the New Jersey Regulations as they relate to prohibited acts and supervision. If you wish to review the entire chapter, please visit the website of the New Jersey Board at:

<http://www.njconsumeraffairs.gov/regulations/Chapter-40-State-Board-of-Professional-Engineers-and-Land-Surveyors.pdf>

SUBCHAPTER 3. LICENSURE REQUIREMENT; EXEMPTIONS; STANDARDS OF PRACTICE; MISCONDUCT

13:40-3.5 Enumeration of prohibited acts

a) Misconduct in the practice of professional engineering or professional land surveying shall include, without limitation:

1) Acting for his or her client or employer in professional matters otherwise than as a faithful agent or trustee; accepting any remuneration other than his or her stated recompense for services rendered.

2) Disregarding the safety, health and welfare of the public in the performance of his or her professional duties: preparing or signing and sealing plans, surveys or specifications which are not of a safe design and/or not in conformity with accepted standards. If the client or employer insists on such conduct, the licensee shall notify the proper authorities and withdraw from further service on the project.

3) Advertising in violation of N.J.A.C. 13:40-3.3.

4) Engaging in any activity which involves him in a conflict of interest, including without limitation:

i) A licensee shall inform his client or employer of any business connection, interest or circumstance which might be deemed as influencing his judgment or the quality of his services to the client or employer.

ii) When in public service as a member, advisor or employee of a governmental agency, a licensee shall not participate in the deliberations or actions of such agency with

Study Question 2:

What appropriate action should the licensee take if requested by the client to sign and seal drawings that are not in conformity with accepted standards?

respect to services rendered or to be rendered by the licensee or any firm or organization with which he is associated in private practice.

iii) A licensee shall not solicit or accept a professional contract from a governmental agency upon which a principal, officer or employee of his firm or organization serves as a member, advisor or employee.

iv) A licensee shall not accept compensation or remuneration, financial or otherwise, from more than one interested party for the same service or for services pertaining to the same work, unless there has been full disclosure to and consent by all interested parties.

v) A licensee shall not accept compensation or remuneration, financial or otherwise, from material or equipment suppliers for specifying their product.

vi) A licensee shall not accept commissions or allowances, directly or indirectly, from contractors or other persons dealing with his client or employer in connection with work for which he is responsible to the client or employer.

5) Affixing his or her signature and seal to any plans, specifications, plats or reports or surveys which were not prepared by him or her or under his or her supervision by his or her employees or subordinates.

6) Failure to comply with Federal, state or local laws, rules or regulations relating to the practice of the profession.

7) Permitting or allowing any person not appropriately licensed pursuant to N.J.S.A. 45:8-27 et seq. or this chapter to act for or on behalf of the licensee as his representative, surrogate or agent while appearing before any public or private body for the purpose of rendering professional engineering or professional land surveying services.

8) Failure to determine and document the identity of the client prior to commencing any work. All correspondence, contracts, bills shall be addressed to that client, unless expressly directed otherwise, in writing, by the client.

9) Failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

10) Failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions.

11) Failure of a licensee to respond in writing within 30 days to a written communication from the State Board of Professional Engineers and Land Surveyors with respect to any investigative inquiry relating to the possible violation of any statute or regulation administered by the Board, and to make available any relevant records with respect to such an inquiry. The 30-day period shall begin on the day when such communication was sent from the Board by certified mail with return receipt requested to the address appearing on the last registration.

12) Rendering engineering or land surveying services and/or professional opinions when not qualified by training, education and experience in the specific discipline of professional engineering and/or professional land surveying that is involved.

Study Question 3:

Is it appropriate for the licensee to accept gratuity from an equipment supplier for specifying their product?

13) Engaging in any activity which results in suspension, revocation or surrender of a professional license or certification in another jurisdiction.

14) Failure to comply with the requirements set forth in N.J.A.C. 13:40-5.1(d) and 5.2 concerning the waiver of the setting of corner markers.

13:40-3.6 Reporting incidents of professional misconduct

If a licensee has knowledge or reason to believe that another person or firm may be in violation of or has violated any of the statutes or rules administered by the State Board of Professional Engineers and Land Surveyors, he or she shall present such information to the Board in writing and shall cooperate with the Board in furnishing such information or assistance as may be required by the Board.

SUBCHAPTER 9. RESPONSIBLE CHARGE OF ENGINEERING OR LAND SURVEYING WORK

13:40-9.1 Supervision of subordinates; maintaining records of adequate supervision; acts reflecting inadequate supervision

a) A licensee in responsible charge of an engineering or land surveying project shall render regular and effective supervision to those individuals performing services which directly and materially affect the quality and competence of engineering or land surveying work rendered by the licensee.

b) A licensee shall maintain such records as are reasonably necessary to establish that the licensee exercised regular and effective supervision of an engineering or land surveying project of which he was in responsible charge.

c) A licensee engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

- 1) The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;
- 2) The failure to personally inspect or review the work of subordinates where necessary and appropriate;
- 3) The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review;
- 4) The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

Chapter 3

NJ Statutes - Disciplinary Proceedings

TITLE 45, CHAPTER 8: PROFESSIONAL ENGINEER AND LAND SURVEYOR LAWS

The following are excerpts from Title 45, Chapter 8 of the New Jersey Statutes as they relate to disciplinary proceedings. If you wish to review the entire chapter, please visit the website of the New Jersey Board at:

<http://www.njconsumeraffairs.gov/Statutes/professional-engineers-land-surveyors-law.pdf>

C. 45:8-39. Practice without license and other violations; penalties; actions for penalties

a. Any person who, hereafter, is not legally authorized to practice professional engineering or land surveying in this State according to the provisions of this act, who shall so practice or offer so to practice in this State, except as provided in section 14 of this act, or any person presenting or attempting to file as his own the certificate of license of another, or who shall give false or forged evidence of any kind to the board, or to any member or representative thereof, in obtaining a certificate of license, or who shall falsely impersonate another licensed practitioner of like or different name, or who shall use or attempt to use an expired certificate of license, an unexpired and revoked certificate of license, or a certificate of license which is on a retired status list, or who shall use either the title

"Engineer-in-Training" or "Surveyor-in-Training" without holding a valid certificate of registration issued by the board, or who shall otherwise violate any of the provisions of this act, shall be subject to a penalty of not more than \$200.00 for the first offense and not more than \$500.00 for each and every subsequent offense. The penalties provided for by this section shall be sued for and recovered in civil actions by the State Board of Professional Engineers and Land Surveyors.

b. Pursuant to the provisions of the "Building Design Services Act," P.L.1989, c.277 (C.45:4B-1 et seq.) the board:

(1) May refer any complaint, question or controversy involving the application of that act to the joint committee.

(2) Shall take no disciplinary action against any licensed architect alleged to have engaged in a violation of that act or the unlicensed practice of engineering.

(3) Shall refer a request for a declaratory ruling to the joint committee.

Study Question 4:

What is the amount of the penalty a licensee is subject to when violating the provisions of Act 45:8-39 for the second time?

(4) Shall provide any and all documents in its possession regarding any matter referred to the joint committee.

(5) Shall, when necessary and appropriate, exercise the investigation or enforcement powers conferred by law to aid and assist the joint committee in its functions.

(6) Shall, consistent with that act, discipline any professional engineer who, or business association authorized to offer engineering services which, violates that act. Such a violation shall be deemed professional misconduct. Any violation of that act by an unlicensed individual or unauthorized business association shall be disciplined by the New Jersey State Board of Architects pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.). Such a violation shall be deemed the unlicensed practice of architecture. However, the design of an engineering work by an unlicensed individual or unauthorized business association shall be disciplined by the State Board of Professional Engineers and Land Surveyors pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.). Such a violation shall be deemed the unlicensed practice of engineering.

c. No person, firm, partnership, association or corporation shall bring or maintain any action in the courts of this State for the collection of compensation for services constituting the practice of engineering or land surveying without alleging and proving that he was duly licensed in accordance with this chapter at the time the alleged cause of action arose.

d. The Superior Court shall have jurisdiction of actions for penalties under this act.

History: L.1938,c.342,s.13; amended 1947,c.60,s.2; 1950,c.149,s.13; 1952,c.129; 1953,c.43,s.38; 1970,c.177,s.3; 1989,c.276,s.4; 1992,c.64,s.4; 1995,c.36,s.2

Chapter 4

Ethical and Disciplinary Case Studies

As explained in Chapters 2 and 3, 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 randomly extracted from the Disciplinary Actions section of the New Jersey State Board of Professional Engineers and Land Surveyors. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the New Jersey Board.

CASE NO. 1

ACTION DATE: April 11, 2019

Complaint:

The Board received information that the Respondent continued to practice engineering after 30 days following the expiration of his license, which constitutes the unlicensed practice of engineering.

Violation:

As a result of the foregoing, the Board found that the Respondent is in violation of N.J.S.A. 45:1-7.1(c).

Determination:

Based on the aforementioned violation, the Board imposed the following disciplinary action against the Respondent:

1. Payment of a civil penalty in the amount of \$3,000.00 immediately upon signing the Respondent’s acknowledgement.

CASE NO. 2

ACTION DATE: March 21, 2019

Complaint:

The Board received information that on or about July 6, 2017, a “Judgement of Conviction” was entered in the Superior Court of New Jersey, Ocean County, memorializing the criminal conviction of the Respondent, for a violation of N.J.S.A. 2C:21-9(c) (Misconduct by Corporate Official), a crime of the second degree. The Respondent was sentenced to a five-year suspended custodial term, and ordered to forfeit \$155,730, together with other terms and conditions.

Violation:

The Board found that the Respondent’s conviction demonstrated that the Respondent engaged in acts constituting a crime or offense involving moral turpitude and relating adversely to professional engineering, and would thus form a basis for disciplinary action against the Respondent license pursuant to N.J.S.A. 45:1-21(f).

Determination:

Based on the aforementioned violation, the Board imposed the following disciplinary action against the Respondent:

1. Permanent revocation of the Respondent’s license to practice engineering in the State of New Jersey.

CASE NO. 3

ACTION DATE: June 21, 2018

Complaint:

The Board received information that on or about October 24, 2016, a “Judgement of Conviction” was entered in the Superior Court of New Jersey, Middlesex County, in connection with the criminal conviction of the Respondent, for violation of four counts of N.J.S.A. 2C:28-7(a)(2), Tampering with Public Records of Information, a third degree crime. As a result of his criminal conviction, the Respondent was sentenced to probation for 24 months for each count, to run consecutively, and ordered to pay a \$300,000.00 fine, together with other terms and conditions.

Violation:

As a result of the foregoing, the Board has determined that the Respondent’s criminal conviction provides a basis to take disciplinary action against his license to practice as a professional engineer in the State of New Jersey pursuant to N.J.S.A. 45:1-21(f).

Study Question 5:

According to this case, can tampering with public records have a negative impact on your NJ PE license?

Determination:

Based on the aforementioned violations, the Board imposed the following disciplinary actions against the Respondent:

1. Suspension of the Respondent's license for a period of one year; and
2. Successful completion, to the Board's satisfaction, ten hours of continuing education in the area of ethics within six months of the filing of the Consent Order.

CASE NO. 4

ACTION DATE: *July 20, 2017*

Complaint:

The Board received information that on February 10, 2016, a "Judgement in a Criminal Case" was entered in the United States District Court, District of New Jersey, in connection with the criminal conviction of the Respondent, for violation of 18 U.S.C. §641 and 642, Embezzlement – Unemployment Fraud. As a result of this conviction the Respondent was sentenced to probation for two years and ordered to pay \$1,500.00 fine and restitution of \$35,880.00, together with other terms and conditions.

Violation:

As a result of the foregoing, the Board has determined that the Respondent's criminal conviction provides a basis to take disciplinary action against his license to practice as a professional engineer in the State of New Jersey pursuant to N.J.S.A. 45:1-21(f).

Determination:

Based on the aforementioned violations, the Board imposed the following disciplinary actions against the Respondent:

1. Suspension of the Respondent's license for a period of two years; and
2. Successful completion, to the Board's satisfaction, eight hours of continuing education in the area of ethics within six months of the filing of the Consent Order.

CASE NO. 5

ACTION DATE: *April 20, 2017*

Complaint:

The Board received information on or about December 12, 2014, a "Judgement of Conviction and Order for Commitment" was entered in the Superior Court of New Jersey, Essex County, in connection with the criminal conviction of the Respondent, to the crimes of conspiracy and official misconduct in violation of N.J.S.A. 2C:30-2 and N.J.S.A. 2C:5-2. The

Respondent was sentenced to three years in prison and ordered to pay a \$5,000.00 fine, together with other terms and conditions.

Violation:

As a result of the foregoing, the Board has determined that the Respondent's criminal conviction provides a basis to take disciplinary action against his license to practice as a professional engineer in the State of New Jersey pursuant to N.J.S.A. 45:1-21(f).

Determination:

Based on the aforementioned violations, the Board imposed the following disciplinary actions against the Respondent:

1. Permanent revocation of the Respondent's license to practice engineering in the State of New Jersey.

Appendix A

Answers to Study Questions

Study Question 1:

List the regulations that govern the practice of engineering in the state of New Jersey:

- Title 45, Chapter 8: Professional Engineer and Land Surveyor Laws
- Title 13, Chapter 40: State Board of Professional Engineers and Land Surveyors

Study Question 2:

What appropriate action should the licensee take if requested by the client to sign and seal drawings that are not in conformity with accepted standards?

“Misconduct in the practice of professional engineering or land surveying shall include, without limitation:Disregarding the safety, health and welfare of the public in the performance of his or her professional duties: preparing or signing and sealing plans, surveys or specifications which are not of a safe design and/or not in conformity with accepted standards. If the client or employer insists on such conduct, the licensee shall notify the proper authorities and withdraw from further service on the project.”

Study Question 3:

Is it appropriate for the licensee to accept gratuity from an equipment supplier for specifying their product?

“A licensee shall not accept compensation or remuneration, financial or otherwise, from material or equipment suppliers for specifying their product.”

Study Question 4:

What is the amount of the penalty a licensee is subject to when violating the provisions of Act 45:8-39 for the second time?

“Any person who, hereafter, is not legally authorized to practice professional engineering or land surveying in this State according to the provisions of this act,.....or who shall otherwise violate any of the provisions of this act, shall be subject to a penalty of not more than \$200.00 for the first offense and not more than \$500.00 for each and every subsequent offense.”

Study Question 5:

According to this case, can tampering with public records have a negative impact on your NJ PE license?

Yes. The Board has determined that the Respondent's criminal conviction (Tampering with Public Records of Information) which is considered a third-degree crime, provides a basis to take disciplinary action against the Respondent's New Jersey license to practice engineering pursuant to N.J.S.A. 45:1-21(f).

Appendix B

References

New Jersey State Board for Professional Engineers and Land Surveyors
<http://www.njconsumeraffairs.gov/pels/Pages/default.aspx>

New Jersey Regulations, Title 13, Chapter 40 (Rules)
<http://www.njconsumeraffairs.gov/regulations/Chapter-40-State-Board-of-Professional-Engineers-and-Land-Surveyors.pdf>

New Jersey Statutes, Title 45, Chapter 8 (Laws)
<http://www.njconsumeraffairs.gov/Statutes/professional-engineers-land-surveyors-law.pdf>

New Jersey State Board Disciplinary Actions
<http://www.njconsumeraffairs.gov/pels/Pages/actions.aspx>