

Texas Board of Professional Engineers

Engineering Ethics and Law & Rules

Overview

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Agenda

- New Legislation / Rule Changes
- Engineering Ethics Review – Law and Rules
- Compliance Overview / Statistics
- Examples / Case Studies
- Review:
 - ◆ Continuing Education
 - ◆ Inactive Status
- Questions and Answers

New Legislation / Rules

- HB 1817 Passed in 79th Regular Session (2005)
- Amended the Texas Engineering Practice Act
- Changes Effective September 1, 2005
- Rules Proposed to Support HB1817 Changes

HB 1817

- Definition of Practice of Engineering now includes offering Certificates of Merit in court.
- Board now allowed to set appropriate late fees for renewals
- Minor clarification of language for Policy Advisory Process

HB 1817

- Information related to cases determined to be frivolous or without merit by the board may now be held confidential and are not releasable to the public.
- An engineer is not required to sign or seal a design, plan, specification, or report that is to be constructed in another state or country.

Rule Reminders

- Discipline / Competency / Branch of Engineering
 - ◆ Review your listing on the website / board records, update if necessary
 - ◆ Competency can be demonstrated via:
 - ◆ Additional Degree
 - ◆ Additional Examination (NCEES)
 - ◆ Additional Experience (4 years w/SER & PE Reference)

Rule Reminders

- Updating Personal Information
 - ◆ December roll-out of Online Profile and Renewal System
- Required to update address, employment, and criminal conviction information - can be violation
- Required to update Firm Registration Info also

Rule Reminders

- **On-Time Renewals**
 - ◆ Be sure to renew your license on time or will be **DELINQUENT**.
 - ◆ **Cannot practice engineering** when license is delinquent, including sealing documents.
 - ◆ Enforcement cases can be opened.
 - ◆ It is engineer's responsibility to renew on time – make sure address/contact info is correct.
 - ◆ If license is delinquent for 2 years, it will expire and you must re-apply for licensure.

Engineering Ethics Review - Law & Rules

- PE shall engage in all activities in an honest and ethical manner.
- PE shall only practice within their area of competence .
- PE shall not perform duties not qualified by education or experience.

Engineering Ethics Review - Law & Rules

- PE is entrusted to protect the health, safety, property, and welfare of the public.
- PE shall not perform an engineering function that is fraud, gross negligence, misconduct, unethical, or illegal and will report the same.
- Misconduct if statements are fraudulent, deceitful, or misleading.

Engineering Ethics Review - Law & Rules

- PE shall not express an opinion in court or other public forum that is not supported by scientific or engineering principles without divulging the basis for that opinion or rationale.
- PE shall notify parties in writing of possible conflict of interest.
- Conflict exists if PE will gain other benefits not divulged to the client.

Engineering Ethics Review - Law & Rules

- Engineer shall:
 - Endeavor to meet all legal requirements and standards
 - Exercise reasonable care not to violate the Engineering Practice Act and Rules
 - Prevent association of name and seal with any unlawful practice

Engineering Ethics Review - Law & Rules

4. Act as faithful agent for client and employer
5. Conduct engineering and business affairs that are respectful of all parties (no inappropriate behavior, misrepresentation of billing, unprofessional correspondence or language, performance of unnecessary work, or harassment)

Engineering Ethics Review - Law & Rules

- PEs will not submit bids to a governmental agency unless authorized by law.
- Bidding includes engineering services, submission of costs in initial qualifying step, and any other information from which costs could be derived, until contract negotiation.
- PEs are allowed to bid in private sector.

Engineering Ethics Review - Law & Rules

- Seal ensures competent person designed and delineates work done.
- License holder will seal only work done by them or performed under their direction.
- A PE may not seal if license is inactive, expired, revoked, or suspended.

Use of the Title “Engineer”

- “Professional Engineer” and “PE” are protected titles – only a licensed PE can use these terms.

Use of the Title “Engineer”

- “Engineer” and related terms are also protected except as follows:
 - ◆ Person is employed by an ‘exempt’ industry or utility; and
 - ◆ Person does not offer engineering services to the public; and
 - ◆ Use of title does not imply work done only by PE.
 - ◆ Term can be used on business cards or correspondence.

Use of the Title “Engineer”

- Board Policy –
 - ◆ If PE is licensed in another state (not TX);
 - ◆ Has a Texas address;
 - ◆ Lists “PE” on business card/correspondence;
 - ◆ Board will not enforce against PE as long as PE lists state licensed and adds phrase “Not Licensed In Texas” is included after “P.E.”
 - ◆ Example: John Doe, P.E., Oklahoma
(Not Licensed in Texas)

Engineering Ethics – Law & Rules

- Disciplinary action for:
 - Knowingly endangering the public
 - Using seal when license is not active
 - Altering a design of another PE without notification to the original PE

Compliance and Enforcement

- TBPE underwent Sunset Review in 2002-2003, resulting in recommendations for improvements in Compliance & Enforcement area. (C&E)
- Renewed Emphasis on Compliance & Enforcement from Board and Staff

Compliance and Enforcement

- Leadership focus on C&E
 - ◆ Active Enforcement Committee
 - ◆ New Executive Director
 - ◆ New Director of Compliance & Enforcement
 - ◆ New C&E Staff (additional investigators)

Compliance and Enforcement

- Enforcement Committee Activities
 - ◆ Sanction Equity Review – comparison of sanctions from case to case and from state to state
 - ◆ New case reporting and statistical review procedures
 - ◆ Board Rule Reviews

Compliance and Enforcement

- Reporting:
 - ◆ Information Sharing Between States via NCEES Enforcement Bulletin Board
 - ◆ Violations in other states that are violations in Texas will be reviewed and may be acted upon

Compliance and Enforcement

- Reporting:
 - ◆ Board relies on PE's and the public to inform of violations
 - ◆ Confidential Reporting Process
 - ◆ Forms Available on Website at:
<http://www.tbpe.state.tx.us>

C&E Statistics

- **FY 2004-2005**
 - ◆ 1601 Cases Opened
 - ◆ 701 Opened by Staff
 - ◆ 900 Opened at Request of Public
 - ◆ 1595 Cases Closed
 - ◆ 953 Voluntary Compliance
 - ◆ 120 Disciplinary Actions
 - ◆ 522 Dismissed / No Violation

C&E Statistics

- **FY 2004-2005**
 - ◆ Cases Opened
 - ◆ 597 - Unlicensed Practice
 - ◆ 246 - Corporate Name
 - ◆ 177 - Cases against PE's
(“D” Cases)
 - ◆ 58 - Illegal Use of Title

C&E Statistics

- **Disciplinary Actions (2004-2005)**
 - ◆ Competency Issues
 - ◆ Plan Stamping
 - ◆ Practice on Delinquent/Expired License
 - ◆ Code Violations – PE must know and follow applicable codes
 - ◆ Firm/Sole Proprietor Registration or Renewal
 - ◆ Sealing / Lack of Sealing / Improper Sealing

C&E Statistics

- Incompetence - \$10,000.00 fine with 3 year suspended license
- Sealing design that failed - \$5,000.00 administrative penalty and 5 years suspended license

C&E Statistics

- Sealing work while licensed suspended – 3 year probated suspension, \$3,000.00 administrative penalty with restitution to client
- Licensed Civil Engineer sealed electrical design - \$1,500.00 administrative penalty and 2 year probated suspension

Examples / Case Studies

- Examples are for demonstration purposes only.
- Do not use these examples in lieu of Act or Board Rules.
- Always refer to most recent version of Act and Board Rules (available on website).
- New Changes to the Act in 2005.

Scenario #1 – Signing / Sealing

- Many Compliance and Enforcement questions (and cases) are related to the use of a seal.
- Most PE's say: 'I know when I can and can't seal something!' ... Do you?

Scenario #1 – Signing / Sealing

- May a licensed PE legally seal and sign engineering works for the following groups according to the Board Rules?

Scenario #1 – Signing / Sealing

- Situation 1 –
 - ◆ For a Graduate engineer under common employment and under his or her direct supervision?

Scenario #1 – Signing / Sealing

■ Situation 1 –

- ◆ For a Graduate engineer under common employment and under his or her direct supervision?
- ◆ YES – 137.33 provides for sealing the work performed under direct supervision.

Scenario #1 – Signing / Sealing

■ Situation 2 –

- ◆ For a Graduate engineer under common employment and under his or her direct supervision in a different discipline?

Scenario #1 – Signing / Sealing

■ Situation 2 –

- ◆ For a Graduate engineer under common employment and under his or her direct supervision in a different discipline?
- ◆ NO – 137.33 provides for sealing the work performed under direct supervision, but, 137.59 states that PE shall only practice in their area of competency.

Scenario #1 – Signing / Sealing

- What about as a project manager overseeing work in different disciplines?
- §137.59(b) “... 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 legally qualified consultants, associates, or employees.”
- Legally Qualified = Licensed P.E.

Scenario #1 – Signing / Sealing

■ Situation 3 –

- ◆ For a friend who is not an employee, but is a very competent graduate engineer and EIT who is performing design work on the side?

Scenario #1 – Signing / Sealing

■ Situation 3 –

- ◆ For a friend who is not an employee, but is a very competent graduate engineer and EIT who is performing design work on the side?
- ◆ What if the work is in the same discipline and the PE checked the work thoroughly?

Scenario #1 – Signing / Sealing

■ Situation 3 –

- ◆ NO – Engineering work not directly performed or supervised by the PE cannot be sealed by a reviewing license holder.

Scenario #1 – Signing / Sealing

■ Situation 4 –

- ◆ For work completely designed, prepared, and supervised at a branch office of the company, which is sent to to the P.E. electronically to review and seal?

Scenario #1 – Signing / Sealing

■ Situation 4 –

- ◆ For work completely designed, prepared, and supervised at a branch office of the company, which is sent to to the P.E. electronically to review and seal?
- ◆ NO – Must be done under P.E.'s supervision and control during the development process.

Scenario #1 – Signing / Sealing

■ Situation 5 –

- ◆ For work completely designed and prepared at a branch office of the company, which is sent to to the P.E. periodically to review and provide comments / corrections, and finally to review and seal?

Scenario #1 – Signing / Sealing

■ Situation 5 –

- ◆ YES – The P.E. has exerted control over the design process, has supervised the engineering work, and is involved in the decision making process.

Scenario #2 – Bidding

- The City of Anywhere, TX, has a need for a new wastewater treatment plant. The city put out a Request for Proposal (RFP) requiring a list of qualifications of the firm and employees, a list of past projects, estimate on hours to design the system, and a schedule of hourly fees for categories of service including engineering design.

Scenario #2 – Bidding

- Situation 1 –

- ◆ Can a PE submit a proposal as requested?

Scenario #2 – Bidding

■ Situation 1 –

- ◆ NO – The Professional Services Procurement Act (PSPA), Chapter 2254 of the Texas Gov't Code does not allow a government entity to request information that may assist in determining costs, such as a schedule of fees. Section 137.53 of the Board Rules requires a PE to comply with PSPA and not submit pricing info.

Scenario #2 – Bidding

■ Situation 2 –

- ◆ What if the city only required a list of qualifications of the firm and employees and a list of past projects?

Scenario #2 – Bidding

■ Situation 2 –

- ◆ What if the city only required a list of qualifications of the firm and employees and a list of past projects?
- ◆ YES – No pricing information is requested.

Scenario #2 – Bidding

■ Situation 3 –

- ◆ Sequoia Engineering, Inc., a registered engineering firm in Texas that employs PE's, wants to respond to the original request. What action should the PE's in the firm take after reading the items requested in the original proposal?

Scenario #2 – Bidding

■ Situation 3 –

- ◆ NOTIFY THE BOARD OF THE REQUEST. License holders are required to notify the board when a governmental entity is requesting information not consistent with PSPA. The board will then notify the governmental entity of the requirement.

Scenario #2 – Bidding

■ Situation 3 –

- ◆ The board will notify the appropriate jurisdictional authority if necessary.
- ◆ The AG has also determined that once a governmental entity selects a representative, the rep is also bound by PSPA and cannot offer competitive bidding for professional services as subcontracts.

Scenario #2 – Bidding

■ Situation 3 –

- ◆ TIP – You may also wish to contact the governmental entity of the bidding issue if there are time constraints or pending deadlines.
- ◆ Many times, the governmental entity does not know PSPA rules and will make the RFP/RFQ change.

Scenario #2 – Bidding

■ Situation 4 –

- ◆ What if the request was from a private company, MegaTech, Inc. to design a water tower on their own property for their own use? Can they require pricing information in the RFP?

Scenario #2 – Bidding

■ Situation 4 –

- ◆ YES – PSPA only applies to services for governmental entities. Competitive bidding for professional services in the private sector is allowed by board rules.

From the Case Files...

- Unlicensed Practice & Use of Illegal Seal
 - ◆ Company 'A' hired a graduate engineer as a project engineer and for three years worked in that capacity. Engineer claimed to be a P.E.
 - ◆ Company 'A' requested proof of P.E. license renewal. Moved engineer into non-engineering position after repeated requests resulted in non-response.

From the Case Files...

- ◆ After two years in non-engineering position, resigned and went to work with Company 'B'.
- ◆ Engineer worked for Company 'B' as an engineer for approximately 2 yrs & then went to work for Company 'C'.

From the Case Files...

- ◆ Company 'A' noticed that engineer had signed and sealed documents using *three* different seal numbers.
- ◆ Company 'A' filed a complaint with TBPE.
- ◆ It was found that engineer was never licensed as a professional engineer in Texas!

From the Case Files...

- ◆ Following a thorough investigation, agency investigators visited Company 'C' to interview the engineer, peers, supervisors and managers.
- ◆ During questioning, engineer admitted that he was not licensed in Texas.

From the Case Files...

- ◆ His supervisor also provided to the Board staff the physical seals and stamps in his name for *10 other states*.
- ◆ Engineer was not licensed in any of those 10 states (other states notified and sent seal evidence).

From the Case Files...

- ◆ Employment Applications indicated that the engineer had a Masters degree in structural engineering from a prominent university.
- ◆ However, university records disproved his attendance, let alone graduation.

From the Case Files...

- ◆ Board completed investigation; offered, received and approved a consent order to Cease and Desist the practice of engineering in Texas until licensed and an administrative penalty of \$10,000.00.

Continuing Education Review

- Program initiated by SB 277, 78th Regular Session (2003)
- Program began September 1, 2003
- Actual reporting of CEP activities began with 2005 renewals

Continuing Education Review

- Required: 15 PDH per renewal period
- Maximum of 14 hours may be carried forward to next year
- 5 PDH max from self-directed study
- 1 PDH in professional ethics per renewal period – cannot carry over
- PDH = Professional Development Hour - a clock hour of Continuing Education Activity

Continuing Education Review

- Self determination of CEP activities
- Certify you have completed the CEP requirement on the yearly renewal form
- Logsheet available from the board (on website)
- Keep certificates, flyers, documentation to support activities
- Possibility of audit. Only then will you send in logsheet and supporting documentation
- Keep records for 3 years

How Do You Earn PDHs?

- 1. Complete/audit college credit course
(15 PDH / semester hour)
- 2. Complete continuing education courses
- 3. Completion of short course/tutorials
- 4. Present/attend seminars/technical presentations
- 5. Teaching/instructing above 1 – 4
(First time only)

How Do You Earn PDHs?

- 6. Publishing papers, articles, books (10 PDH)
- 7. Active Participation in Professional/Technical Societies
- 8. Patents issued (15 PDH)
- 9. Engaging in self-directed study (5 PDH Maximum)

Who is exempt?

- 4 types of exemptions
- Not the same as exemption from \$200 renewal fee
 - License holders by way of exam – exempt 1st license period
 - Deployed Military
 - Disability or Illness
 - Inactive Status

Inactive Status Review

- Any license holder in good standing may apply for inactive status prior to expiration date of license
- Not required to maintain continuing education while inactive
- Not required to take an examination to reactivate license

Inactive Status Review

- The license holder may use any term authorized for an active license followed by the term “(Inactive)”

Example:

Bob Smith, P.E. (Inactive)

Inactive / Reactivating

- To file for inactive status, submit a request form in writing (available on website) and pay Inactive renewal fee.
- To file for reactivation:
 - ◆ Submit request form in writing (available on website)
 - ◆ Pay appropriate fee (and any difference in renewal fees)
 - ◆ Complete outstanding CEP activities (not to exceed 30 PDH)

Contact TBPE



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Questions

And

Answers