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Engineering Ethics for New York Professional Engineers

Course No: NY1-001

Credit: 1 PDH

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Table of Contents

Chapter 1: Overview of New York Engineering Board Regulations	3
New York State Board of Professional Engineers and Land Surveyors	3
New York Education Law	3
New York Rules of the Board of Regents	3
Regulations of the Commissioner	4
NYSED Office of Professions Disciplinary Authority	4
Chapter 2: New York Rules of Professional Conduct	5
Part 29: New York Rules of the Board of Regents – Unprofessional Conduct	5
§ 29.1 General Provisions	5
§ 29.3 General Provisions for Design Professions	8
Chapter 3: Ethical and Disciplinary Case Studies	10
Case No: 28228	10
Case No: 26598	10
Case No: 28142	10
Case No: 27061	11
Case No: 27564	11
Case No: 27885	11
Case No: 27448	11
Appendix A: References	12

Chapter 1

Overview of New York Engineering Board Regulations

New York State Board of Professional Engineers and Land Surveyors

The New York State Board of Professional Engineers and Land Surveyors (Board) was established to regulate the practice of engineering and land surveying in the State of New York. Members of the Board are appointed by the board of regents on recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct. The board is composed of not less than seven professional engineers and not less than two land surveyors licensed in the State of New York. An executive secretary to the board is appointed by the board of regents on recommendation of the commissioner is a professional engineer or land surveyor licensed in the State of New York.

The function of the members of the Board is to advise on licensing requirements, licensing examinations and practice issues, as well as participate in licensure disciplinary and/or restoration and moral character proceedings. The Board is responsible for implementing the provisions of Article 145 of the New York Education Law, Part 29 of the Rules of Board of Regents and Part 68 of the Regulations of the Commissioner.

New York Education Law

The New York Education Law is a compilation of statutes organized by subject area into a code made up of titles and articles created by the New York State Legislature. Title VIII, Article 145, "Engineering and Land Surveying" is administered by the New York State Education Department (NYSED) Office of Professions in the interest of public health and safety to regulate the practice of engineering in the State of New York. It was last updated by laws that create, amend, or repeal statutory material.

Rules of the Board of Regents

The Rules of the Board of Regents are a compilation of the Codes, Rules and Regulations of the State of New York (NYCRR) and are organized by parts. Part 17 of the rules, "Disciplinary Proceedings in the Professions" and Part 29 of the rules, "Unprofessional Conduct" are promulgated by the Board of Regents and the NYSED. Part 17 stipulates the disciplinary process upon conviction of a licensee whereas Part 29 stipulates the acts committed by the licensee, which constitute a violation of rules. The NYCRR state the rule followed by the history of the rule which indicates when the rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. Part 29 is presented in Chapter 2 below.

Regulations of the Commissioner

The Rules of the Board of Regents are a compilation of the Codes, Rules and Regulations of the State of New York (NYCRR) and are organized by parts. Part 68 of the rules, “Engineering and Land Surveying” is promulgated by the Board of Regents and the NYSED and implemented by the Office of Professions to regulate the practice of engineering and land surveying in the State of New York. The NYCRR state the rule followed by the history of the rule which indicates when the rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date.

NYSED Office of Professions Disciplinary Authority

To ensure public protection in New York State, the New York State Education Department's Office of the Professions (OP) investigates and prosecutes professional misconduct in all professions except medicine. Professional misconduct is the failure of a licensed professional to meet expected standards of practice.

The Board of Regents, which licenses individuals in 50 professions defined in Education Law, is responsible for the final disposition of all disciplinary matters. Professional misconduct is defined in Education Law and in the Rules of the Board of Regents. Professional misconduct includes the following:

- Engaging in acts of gross incompetence or gross negligence on a single occasion, or negligence or incompetence on more than one occasion
- Permitting or aiding an unlicensed person to perform activities requiring a license
- Refusing a client or patient service because of race, creed, color, or national origin
- Practicing beyond the scope of the profession
- Releasing confidential information without authorization
- Being convicted of a crime
- Failing to return or provide copies of records on request
- Being sexually or physically abusive
- Abandoning or neglecting a patient in need of immediate care
- Performing unnecessary work or unauthorized services
- Practicing under the influence of alcohol or other drugs

A range of penalties that includes censure and reprimand, fines (up to \$10,000 for each violation), suspensions and/or probationary terms may be imposed on licensees who have committed misconduct. The Board of Regents takes final action on the most serious cases of misconduct. In severe cases of misconduct, the Regents may revoke the professional's license.

OP also investigates allegations of illegal (unlicensed) practice in all 50 licensed professions, including medicine. Practicing a profession without a license and current registration is a felony in New York State.

Several disciplinary cases, presented in Chapter 3 below, were selected at random 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

New York Rules of Professional Conduct

We, as Professional Engineers, are expected to take reasonable precautions and care in fulfilling our engineering duties, and uphold the honor and integrity of our profession. To understand further what this means, let's review the following excerpts from Part 29 of the New York Rules of the Board of Regents - Unprofessional Conduct. *(Note: If you wish to review the entire part, please click on <http://www.op.nysed.gov/title8/part29.htm>.)*

Part 29: New York Rules of the Board of Regents – Unprofessional Conduct

§ 29.1 General Provisions

- a. Unprofessional conduct shall be the conduct prohibited by this section. The provisions of these rules applicable to a particular profession may define additional acts or omissions as unprofessional conduct and may establish exceptions to these general prohibitions.
- b. Unprofessional conduct in the practice of any profession licensed, certified or registered pursuant to title VIII of the Education Law, except for cases involving those professions licensed, certified or registered pursuant to the provisions of Article 131 or 131-B of such law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991, shall include:
 1. willful or grossly negligent failure to comply with substantial provisions of Federal, State or local laws, rules or regulations governing the practice of the profession;
 2. exercising undue influence on the patient or client, including the promotion of the sale of services, goods, appliances or drugs in such manner as to exploit the patient or client for the financial gain of the practitioner or of a third party;
 3. directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional services;
 4. permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice the same profession, or a legally authorized trainee practicing under the supervision of a licensed practitioner. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a professional licensee

constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice, except as otherwise provided by law with respect to a facility licensed pursuant to Article 28 of the Public Health Law or Article 13 of the Mental Hygiene Law;

5. conduct in the practice of a profession which evidences moral unfitness to practice the profession;
6. willfully making or filing a false report, or failing to file a report required by law or by the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so;
7. failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client;
8. revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law;
9. practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
10. delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them;
11. performing professional services which have not been duly authorized by the patient or client or his or her legal representative;
12. advertising or soliciting for patronage that is not in the public interest:
 - i. Advertising or soliciting not in the public interest shall include, but not be limited to, advertising or soliciting that:
 - a. is false, fraudulent, deceptive or misleading;
 - b. guarantees any service;
 - c. makes any claim relating to professional services or products or the cost or price therefore which cannot be substantiated by the licensee, who shall have the burden of proof;
 - d. makes claims of professional superiority which cannot be substantiated by the licensee, who shall have the burden of proof; or
 - e. offers bonuses or inducements in any form other than a discount or reduction in an established fee or price for a professional service or product.

- ii. The following shall be deemed appropriate means of informing the public of the availability of professional services:
 - a. informational advertising not contrary to the foregoing prohibitions; and
 - b. the advertising in a newspaper, periodical or professional directory or on radio or television of fixed prices, or a stated range of prices, for specified routine professional services, provided that if there is an additional charge for related services which are an integral part of the overall service being provided by the licensee, the advertisement shall so state, and provided further that the advertisement indicates the period of time for which the advertised prices shall be in effect.
 - iii.
 - a. all licensees placing advertisements shall maintain, or cause to be maintained, an exact copy of each advertisement, transcript, tape or videotape thereof as appropriate for the medium used, for a period of one year after its last appearance. This copy shall be made available for inspection upon demand of the Education Department;
 - b. a licensee shall not compensate or give anything of value to representatives of the press, radio, television or other communications media in anticipation of or in return for professional publicity in a news item;
 - iv. Testimonials, demonstrations, dramatizations, or other portrayals of professional practice are permissible provided that they otherwise comply with the rules of professional conduct and further provided that the following conditions are satisfied:
 - a. the patient or client expressly authorizes the portrayal in writing;
 - b. appropriate disclosure is included to prevent any misleading information or imagery as to the identity of the patient or client;
 - c. reasonable disclaimers are included as to any statements made or results achieved in a particular matter;
 - d. the use of fictional situations or characters may be used if no testimonials are included; and
 - e. fictional client testimonials are not permitted;
13. failing to respond within 30 days to written communications from the Education Department or the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of 30 days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from either department by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of 30 days shall commence on the date of delivery to the licensee, as indicated by the return receipt;
14. violating any term of probation or condition or limitation imposed on the licensee by the Board of Regents pursuant to Education Law, Section 6511.

§ 29.3 General Provisions for Design Professions

- a. Unprofessional conduct shall also include, in the professions of architecture and landscape architecture, engineering and land surveying:
1. being associated in a professional capacity with any project or practice known to the licensee to be fraudulent or dishonest in character, or not reporting knowledge of such fraudulence or dishonesty to the Education Department;
 2. failing to report in writing to the owner or to the owner's designated agent any unauthorized or improperly authorized substantial disregard by any contractor of plans or specifications for construction or fabrication, when professional observation or supervision of the work is provided for in the agreement between the owner and the design professional or when supervision of the work is under the control of the design professional;
 3. certifying by affixing the licensee's signature and seal to documents for which the professional services have not been performed by, or thoroughly reviewed by, the licensee; or failing to prepare and retain a written evaluation of the professional services represented by such documents in accordance with the following requirements:
 - i. a licensee who signs and seals documents not prepared by the licensee or by an employee under the licensee's direct supervision shall prepare, and retain for a period of not less than six years, a thorough written evaluation of the professional services represented by the documents, including but not limited to drawings, specifications, reports, design calculations and references to applicable codes and standards. Such written evaluation shall clearly identify the project and the documents to which it relates, the source of the documents and the name of the person or organization for which the written evaluation was conducted, and the date of the evaluation, and the seal and signature of the licensee shall also be affixed thereto; and
 - ii. nothing in this paragraph shall be construed as authorizing the practice of a design profession in this State by persons other than those authorized to practice pursuant to the provisions of Article 145, 147 or 148 of the Education Law;
 4. failure by a licensee to maintain for at least six years all preliminary and final plans, documents, computations, records and professional evaluations prepared by the licensee, or the licensee's employees, relating to work to which the licensee has affixed his seal and signature;
 5. having a substantial financial interest, without the knowledge and approval of the client or employer, in any products or in the bids or earnings of any contractor, manufacturer or supplier on work for which the professional has responsibility;
 6. permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, subcontractor or consultant. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space,

facilities, equipment, or personnel services used by a professional licensee constitutes a percentage of or is otherwise dependent upon the income or receipts of the licensee from such practice. This provision shall apply in lieu of Section 29.1(b)(4) of this Part;

7. accepting any form of compensation from more than one party for services on the same project without fully disclosing the circumstances and receiving approval from all interested parties;
8. participating as a member, advisor or employee or a government body in those actions or deliberations which pertain to services provided by the practitioner or his or her organization for such government body; or
9. in the profession of land surveying, the revision, alteration, or update of any existing boundary survey without adequate confirmation of relevant boundary lines and monuments. To be adequate, such confirmation shall include a reasonable field verification and shall be sufficiently extensive to reasonably ensure the accuracy of the revision, alteration, or update, as appropriate to the circumstances of the revision, alteration, or update.

Chapter 3

Ethical and Disciplinary Case Studies

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

The following ethical and disciplinary case studies were extracted from the website of the NYSED Office of the Professions. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the New York Board of Regents.

CAL. NO. 28228

ACTION DATE: October 27, 2015

Summary: Licensee admitted to charges of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state(s) where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically Missouri discipline, and Kansas discipline and filing a false report.

Action: Application for consent order granted; Penalty agreed upon: 2 year stayed suspension, 2 years probation, \$5,000 fine.

CAL. NO. 26598

ACTION DATE: September 17, 2015

Summary: Licensee was found guilty of unprofessional conduct for failing to complete mandatory education requirements and for filing a false report indicating that he was in compliance with said requirements.

Action: Found guilty of professional misconduct; Penalty: Revocation.

CAL. NO. 28142

ACTION DATE: May 19, 2015

Summary: Licensee admitted to the charge of having practiced the profession of engineering while having an expired license in the State of Louisiana.

Action: Application for consent order granted; Penalty agreed upon: 1 year stayed suspension, 1 year probation to commence upon return to practice in the State of New York, \$2,500 fine payable within 6 months.

CAL. NO. 27061

ACTION DATE: March 17, 2015

Summary: Licensee admitted to the charge of practicing the profession of engineering without having completed the mandatory continuing education requirements.

Action: Application for consent order granted; Penalty agreed upon: 2 year stayed suspension, 2 years probation, \$5,000 fine.

CAL. NO. 27564

ACTION DATE: January 13, 2015

Summary: Licensee did not contest charges of failing to maintain field visit notes and to prepare and maintain written evaluations of professional services represented by documents signed and sealed by him but not prepared by him or by an employee under his direct supervision.

Action: Application for consent order granted; Penalty agreed upon: Censure and Reprimand, 1 year probation, \$1,000 fine.

CAL. NO. 27885

ACTION DATE: January 13, 2015

Summary: Licensee admitted to the charge of having been convicted of Falsifying Business Records in the 1st Degree, a class E felony.

Action: Application to surrender license granted.

CAL. NO. 27448

ACTION DATE: December 16, 2014

Summary: Licensee admitted to charges of receiving fees from a third party in connection with the performance of professional services; failing to prepare and retain a thorough written evaluation of plans he signed and sealed which were not prepared by an employee under his direct supervision; and failing to maintain any preliminary and final plans, documents, computations, records and professional evaluations prepared by him, or by his employees, relating to work to which he had affixed his seal and signature.

Action: Application for consent order granted; Penalty agreed upon: 6 month actual suspension, 30 month stayed suspension, 3 years probation, \$10,000 fine.

Appendix A

References

NY State Board of Professional Engineers and Land Surveyors
<http://www.op.nysed.gov/prof/pels/>

NY Education Law: Article 145, Professional Engineering and Land Surveying
<http://www.op.nysed.gov/prof/pels/article145.htm>

NY Rules of the Board of Regents: Part 29, Unprofessional Conduct
<http://www.op.nysed.gov/title8/part29.htm>

NY Regulations of the Commissioner: Part 68, Engineering and Land Surveying
<http://www.op.nysed.gov/prof/pels/part68.htm>

NY Rules of the Board of Regents: Part 17, Disciplinary Proceedings in the Professions
<http://www.op.nysed.gov/title8/part17.htm>

New York's Professional Misconduct Enforcement System
<http://www.op.nysed.gov/opd/>

NY Enforcement Actions
<http://www.op.nysed.gov/opd/rasearch.htm>