

Guidelines for NSPE State Societies In Addressing Unlicensed Practice of Engineering

Prepared by the NSPE Licensure & Qualifications for Practice Committee, 7/03

Approved by the NSPE Board of Directors, 10/03

Introduction

The purpose of this document is to present guidance to NSPE State Societies (“State Societies”) and to NSPE members on reporting potential incidents of the unlicensed practice, or offer to practice, of engineering.

A recent NCEES survey of State Professional Engineering Licensing Boards (“State Licensing Boards”) requested information from each Board on the categories of violations indicated for cases opened during a two-year period. Responses from 43 boards were received, with information on the reported violations for 3,369 disciplinary cases. The frequency of categories of violations reported in that survey is as follows, beginning with the most frequent:

- incompetence/negligence;
- unlicensed practice/offer;
- ethics/ professional conduct/ misconduct;
- fraud, deceit, misrepresentation; and
- sealing of work not prepared under the direct supervision and control of the licensee.

It is clear from the results of this survey that the unlicensed practice, or offer to practice, of engineering is one of the most frequent violations of State engineering rules and statutes.

State Licensing Boards open investigations of the unlicensed practice, or offer to practice, of engineering only upon knowledge of such potential unlicensed practice based on complaints filed and/or personal knowledge by Board members. It is likely that State Licensing Boards may be aware of only a small percentage of the incidents of unlicensed practice, or offers to practice.

The practice of engineering by unlicensed practitioners potentially places the public health, safety and welfare at risk. For this reason, it is of interest to State Societies to encourage members to report potential unlicensed practice, or offers to practice, to State Licensing Boards. Note that efforts to prevent unlicensed practice are intended solely to protect the public health, safety and welfare, and are not intended to improperly restrict lawful activities or practices.

In many jurisdictions, a Professional Engineer has an ethical and legal obligation to report unlicensed practice to the State Licensing Board.

The statutory ability to regulate unlicensed practice varies considerably from jurisdiction to jurisdiction. In some jurisdictions, the State Licensing Board can directly regulate unlicensed practitioners. In other jurisdictions, the State Licensing Board must act through the Attorney General's office, competing with other State legal demands, or through the local court system. In either case, the correct action for a Professional Engineer who becomes aware of unlicensed practice is to report that practice, with all available evidence, to the State Licensing Board.

Types and Evidence of Unlicensed Practice or Offers to Practice Engineering

There are many different examples of unlicensed individuals or unregistered firms which may inappropriately practice, or offer to practice, engineering, including:

- Non-professionals;
- Unlicensed engineers;
- Professional Engineers who are not licensed in the jurisdiction;
- Members of other professions (i.e., architects, landscape architects, surveyors, geologists, and many others. Note that the boundaries between practices vary considerably by jurisdiction);
- Engineering firms which do not have an appropriate Certificate of Authorization or Engineering Firm Licensure, if required; and
- Professional Engineers whose license in the jurisdiction has lapsed.

Unlicensed practice, or offers to practice, engineering may be evidenced in a variety of different ways, such as:

- Correspondence, reports or plans comprising the practice of engineering;
- Engineering proposals;
- Website or other internet communications;
- Advertisements;
- Court appearances as expert witnesses by individuals who are unlicensed in the jurisdiction;
- Public presentations by individuals who are unlicensed in the jurisdiction; and
- Verbal or written offers to provide engineering services.

What Should NSPE MEMBERS Do Regarding Unlicensed Practice or Offers to Practice Engineering?

- **Report potential instances in a letter to the State Licensing Board**
 - Include all available evidence – a dated proposal or document signed by the potentially unlicensed individual, or a website address, or a copy of an advertisement
 - If readily available evidence is not available, describe what is known, with dates, locations and names.
- **Don't Do Anything Else**
 - Don't investigate;
 - Don't contact or correspond with the potentially unlicensed practitioner;
 - Don't publicly accuse the potentially unlicensed practitioner.

What Can STATE SOCIETIES Do Regarding Unlicensed Practice or Offers to Practice Engineering?

- Inform membership about the importance of the issue;
- Encourage individual members to report potential instances of unlicensed practice;
- Publicize unlicensed practice actions taken by State Licensing Boards in State Society publications;
- Mention at State Society and Chapter meetings; and/or
- Report potential unlicensed practice to the State Licensing Board by Chapter or State Society correspondence.

Legal Considerations:

Filing a complaint with a State Licensing Board has potential legal implications for individuals or professional organizations. A brief summary of some of the pertinent legal issues, and model general correspondence language, are presented herein. Please note that state laws, regulations and procedures vary and individuals are strongly advised to review the individual requirements for the state(s) involved. This information is being provided as general information and is not intended to constitute legal advice.

Role of the State Society

A State Society has no legal authority to directly sanction individuals for engaging in the unlicensed practice of engineering. For example, a State Society has jurisdiction only over its members, with the most severe sanction being expulsion from the State Society.



Enforcement of the state engineering licensure law and the civil and criminal provisions that may exist under such laws are vested with the State Licensing Board, and the legal apparatus that is available to the Board (e.g., department of professional regulation, State Attorney General, investigative resources and authority, sovereign immunity, etc.). However, a State Society and its members play an important role in assisting the State Licensing Board in performing its responsibilities by bringing actual incidents of unlicensed practice to the Board's attention through the complaint process. Some State Societies have established policies and committees to address the issue of unlicensed practice of engineering.

Complaint Process

In some cases, the question of unlicensed practice is very clear. In other cases, the issue may be murky. For that reason, it is important that any allegations regarding unlicensed practice contained in a complaint be completely factual and not based upon speculation or assumptions. In addition, individuals filing a complaint have an obligation to familiarize themselves with the state engineering licensure laws and regulations before filing the complaint, in order to understand the complaint procedures and to understand what is required and what may be permitted under the laws and regulations of the state. In general, complaints filed in good faith based upon factual information and a reasonable interpretation of the law and not motivated by an ill-motive are likely to withstand challenge.

Many State Licensing Board rules provide an imperative for reporting known incidents of unlicensed practice, and added support in doing so, by including an ethical obligation for professional engineers to report violations of the engineering licensure law to the State Licensing Board.

Liability Issues

A complaint must never be motivated by personal animosity or an attempt to gain some type of competitive advantage over another party. Such ill-motivated complaints could expose the individual complainant and the engineering society to defamation and antitrust liability claims which can result in damage awards, fines and even criminal penalties, not to mention associated legal fees and court costs. Some State Societies have purchased association professional liability insurance to provide a degree of protection for certain civil liability exposure for officers, directors, staff and the State Society. In addition, Congress and many states have enacted so called "Volunteer Protection Acts" to provide a degree of protection for individual volunteers acting in good faith within the scope of their authority as a volunteer within the state organization. However, these laws provide limited protection for individuals, vary significantly from state to state and in many cases have not been tested in the courts.

Filing a Complaint

Many State Licensing Boards require that a complaint be filed in writing, and some require complaints to be filed on specific forms. Some State Licensing Boards allow verbal filing of complaints as long as the complaint is not anonymous. Prior to filing a complaint, it is recommended that a call be placed to the State Licensing Board office to discuss appropriate procedures in that jurisdiction.

Sample Correspondence

The following is a model draft of a letter to a State Licensing Board regarding unlicensed practice. The names are fictitious.

Date

_____, Board Administrator

Board of Licensure of Professional Engineers
Address

Re: Potential Unlicensed Practice—Mr. James Doe and J. Doe Engineering, Inc.

Dear Mr. or Ms. _____:

As you are aware, the *State* Engineering Licensure Board Rules of Professional Conduct Section I.h. states: “Engineers having knowledge of a potential violation of any of these Rules of Professional Conduct shall provide the Board with the information and assistance necessary to make the final determination of such violation.”

The purpose of this letter is to report the potential unlicensed practice of engineering by James Doe and his firm J. Doe Engineering, Inc., of East Westville. Mr. Doe presented the attached engineering letter report to the Town of East Westville Planning Board dated November 11, 2003 indicating that he is a Licensed Professional Engineer. Neither Mr. Doe nor his firm J. Doe Engineering, Inc. appear on the Board’s latest roster of Professional Engineers or authorized engineering firms, respectively. I was told by the Board staff by telephone today that Mr. Doe is not licensed as of this date.

If you have questions or comments concerning this matter, please do not hesitate to contact me at 999-450-0000.

Very truly yours,

John Q. Public, P.E.

Enclosure

Conclusion



State Societies are encouraged to work with the State Licensing Boards to help alleviate the unlicensed practice, or offer to practice, of engineering. The National Society of Professional Engineers, through its appropriate committees, is willing to work jointly with the State Societies in their efforts regarding this issue.