DUTY TO REPORT VIOLATION – ANONYMOUS COMPLAINT

Case No. 02-11

Facts:
Engineer A observes what he believes is a serious violation of the state board's rules of professional conduct by Engineer B. Engineer A is not a competitor of Engineer B and does not know Engineer B personally. Thereafter, Engineer A submits an anonymous complaint to the state engineering licensure board identifying Engineer B and the circumstances surrounding the alleged violation of the state board's rules of professional conduct.

Question:
Was it ethical for Engineer A to submit an anonymous letter to the state engineering licensure board?

References:

Section II.1.	-	*Code of Ethics:*	*Engineers shall hold paramount the safety, health, and welfare of the public.*
Section II.1.e.	-	*Code of Ethics:*	*Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.*
Section II.1.f.	-	*Code of Ethics:*	*Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*
Section II.3.	-	*Code of Ethics:*	*Engineers shall issue public statements only in an objective and truthful manner.*
Section III.7.	-	*Code of Ethics:*	*Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.*
Section III.8.a.	-	*Code of Ethics:*	*Engineers shall conform with state registration laws in the practice of engineering.*

Discussion:
The duty of engineers to come forward with information on ethical violations by other engineers is a basic ethical obligation. Engineering, like other profession, is a self-policing profession whereby licensed professional engineers have a fundamental obligation to report instances of unprofessional conduct to the appropriate public authorities.

The NSPE Board of Ethical Review (Board) has addressed issues relating to the obligations of engineers to report violations and improper actions in the past—although not specifically under the circumstances described in the present case. In BER Case 89-7, Engineer A was retained to investigate the structural integrity of a 60-year old occupied apartment building which his client was planning to sell. Under the terms of the agreement with the client, the structural report written by Engineer A was to remain confidential. In addition, the client made clear to Engineer A that the building is being sold "as is" and he is not planning to take any remedial action to

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repair or renovate any system within the building prior to its sale. Engineer A performed several structural tests on the building and determined that the building is structurally sound. However, during the course of providing services, the client confided in Engineer A and informed him that the building contained deficiencies in the electrical and mechanical systems which violate applicable codes and standards. While Engineer A was not an electrical nor mechanical engineer, he did realize those deficiencies could cause injury to the occupants of the building and so informs the client. In his report, Engineer A made a brief mention of his conversation with the client concerning the deficiencies. However, in view of the terms of the agreement, Engineer A did not report the safety violations to any third party. In ruling that it was unethical for Engineer A not to report the safety violations to the appropriate public authorities, the Board highlighted the engineer's primary obligation to protect the safety, health, property, and welfare of the public. Said the Board, "the obligation of the engineer to refrain from revealing confidential information, data, and facts concerning the business affairs of the client without consent of the client is a significant ethical obligation. (However) matters of public health and safety must take precedence. The NSPE Code of Ethics is clear on this point. Code Section I.1. employs the word "paramount" to describe the obligation of the engineer with respect to the public health and safety.

In the present case, it is the Board's view that Engineer A clearly had a fundamental ethical obligation to cooperate with the state board as required by the plain language in the NSPE Code. The basic question in this case is whether an anonymous complaint is appropriate under the facts. On the other hand, there are reasons why raising the issue via a signed letter vs. anonymously would be appropriate. Arguably, Engineer B should have some idea of who made the charge against him in order to understand the context in which the charges are being made. It is generally considered fundamentally unfair not to know who one's accuser is. In addition, not having an actual complainant involved in the board's complaint could weaken the case against an individual who may have violated the state board's rules of professional conduct.

On the other hand, in the absence of compelling additional facts, the Board is not willing to conclude that it would be unethical to submit an anonymous complaint. Certainly a great deal more is accomplished by the filing of a legitimate anonymous complaint than by the filing of no complaint at all, particularly where the public health and safety is at risk. However, the Board believes that it makes good policy sense for an engineer to step forward and publicly raise an ethical concern with the state board.

Conclusion:

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It was ethical for Engineer A to submit an anonymous letter to the state engineering licensure board as long as the state engineering licensure board has a procedure for accepting anonymous complaints.

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Each opinion is intended as guidance to individual practicing engineers, students and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole-proprietorships, government agencies, university engineering departments, etc.), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services—which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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