EMPLOYMENT—
DUTY TO DISCLOSE REVOCATION OF CONTRACTOR LICENSE

Case No. 03-6

Facts:

Engineer F is a professional engineer and applies for a professional engineering position with an engineering firm. Previously, Engineer F was the owner of a fire sprinkler contracting firm which was required to have a contractor's license. On the engineering firm employment application, there is a question asking whether the engineer "has ever been disciplined in the practice of professional engineering or had his license suspended or revoked?" Engineer F responds in the negative on the employment application. Later, the engineering firm learns that while Engineer F's engineering license was never revoked or suspended, Engineer F's contractor's license was revoked because he allowed an unlicensed individual who was unrelated to his contracting firm to use the contractor license number on another project.

Question:

Did Engineer F have an ethical obligation to report on the employment application the revocation of his contractor's license?

References:

Section I.1.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health and welfare of the public.*
Section I.4.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees.*
Section II.3.a.	-	*NSPE Code of Ethics:*	*Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.*
Section II.5.	-	*NSPE Code of Ethics:*	*Engineers shall avoid deceptive acts.*
Section II.5.a.	-	*NSPE Code of Ethics:*	*Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.*
Section III.1.	-	*NSPE Code of Ethics:*	*Engineers shall be guided in all their relations by the highest standards of honesty and integrity.*
Section III.3.a.	-	*NSPE Code of Ethics:*	*Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.*
Section III.6.	-	*NSPE Code of Ethics:*	*Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.*

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Discussion:
The obligation to provide full and complete disclosure to employers or clients is a critical one for professional engineers. The scope of this obligation is sometimes subject to examination depending upon the issues involved and other factors.

Two previous Board of Ethical Review cases provide some background for considering this case. The first is BER Case 97-11, where Engineer A was retained by Client B to perform design services and provide a Critical Path Method (CPM) schedule for a manufacturing facility. Engineer A prepared the plans, specifications, and the CPM schedule. During the rendering of services to Client B on this project, the state board of professional engineers contacted Engineer A regarding an ethics complaint filed against Engineer A by Client C relating to services provided on a project for Client C that were similar to the services being performed for Client B. Client C alleged that Engineer A lacked the competence to perform the services in question. Engineer A did not believe it was necessary to notify Client B of the pending complaint. Later, through another party, Client B learned of the ethics complaint filed against Engineer A and told Engineer A that he was upset by the allegations and that Engineer A should have brought the matter to Client B's attention.

In finding that it was ethical for Engineer A not to report to Client B the ethics complaint filed against Engineer A by Client C, the Board noted that while an engineer clearly has an ethical obligation to act as a faithful agent and trustee for the benefit of a client, avoid deceptive acts, be objective and truthful, avoid conflicts, etc., such obligations would not compel an engineer to automatically disclose that a complaint had been filed against the engineer with the state engineering licensure board. As the Board noted, a complaint is a mere allegation and does not amount to a finding of fact or conclusion of law. Said the Board, “No engineer should be compelled to disclose potentially damaging allegations about his professional practice—allegations that could be false, baseless, and motivated by some malicious intent. Instead, Engineer A should weigh all factors and, depending upon the nature and seriousness of the charges, take prudent action, which might include providing Client B with appropriate background information.”

The Board also clarified that while it was not suggesting that Engineer A had an ethical obligation to report to Client B the ethics complaint filed against him by Client C, the Board believed that Engineer A should have weighed providing Client B with some limited background information in a dispassionate and nonprejudicial matter for the benefit of all concerned. By doing so, Engineer A would be providing Client B with early notice of the pending matter so that Client B would be able to respond

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to comments or questions by third parties. This action would demonstrate to Client B that Engineer A was acting in a professional and responsible manner and had nothing to hide or fear concerning the complaint.

The second case that relates to the instant case is BER Case 75-5, where the BER found that personal misconduct that was not related to the practice of engineering was a violation of the NSPE Code of Ethics. In Case 75-5 the BER said: It may be argued that a code of ethics of any profession is only intended to relate to conduct which prejudices or may tend to prejudice the performance of professional services, and accordingly personal misconduct unrelated to such performance should be left to other proper authority. But counter to this approach should be a recognition that the basic purpose of a code of ethics is to so regulate and direct the activities of professional practitioners that the public they serve may have confidence in their integrity, honesty, and decorous behavior. Thus, it is that the NSPE Code embraces language similar to that found in the codes of other professions to the effect (that Engineers shall avoid deceptive acts)." The BER further stated in Case No. 75-5: "We are therefore of the view, and are now prepared to state, that personal misconduct of the kind indicated in this case is subject to the Code of Ethics and may be dealt with accordingly under the code in addition to whatever action may be appropriate by legal authorities."

Clearly, a major difference between BER Case 97-11 and the present case is that here, Engineer F had his contractor's license revoked because of actual demonstrated violation on Engineer F's part. The facts do not suggest a mere allegation, but instead an actual adjudication of wrongdoing. The Board believes that this is a critical issue that makes the need for full disclosure a more important consideration than the circumstances described in BER Case 97-11. Further, BER Case 75-5 clearly indicates that the BER must look beyond just the specific practice of engineering to the whole person when addressing ethical issues relating to professional engineers. The present case involves such a situation. Moreover, while any act of the type committed by Engineer F as a contractor under the facts would be entirely unacceptable and deserving of condemnation and punishment, the fact that Engineer F's services related to fire protection of a facility would seem to be of particular interest to the employer. Holding paramount the safety, health, and welfare of the public is the first Fundamental Canon of the NSPE Code of Ethics that all Engineers should practice at all times, whether in the practice of engineering or whatever practice they perform. The fact that the request by the employer related solely to having a license suspended or being disciplined in connection with the practice of professional engineering should have been of no consequence to Engineer F. While it may have appeared that the employer was

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seeking information related to Engineer F's practice of engineering, it should have been equally clear to Engineer F that the employer's questions sought to elicit information concerning Engineer F's character, integrity, and credibility as a professional engineer. While Engineer F could claim a legalistic rationale for being evasive and not responding to the full implications of the question, as a matter of ethics, Engineer F's conduct was failing. Engineer F is assumed to have realized that the employer would have wanted to know this information before making the decision to hire Engineer F.

In closing, the facts do not reveal the ultimate outcome of the situation between Engineer F and Engineer F's employer. However, in view of the importance of honesty and candor in the performance of engineering services on behalf of an employer or client, it would seem that Engineer F's failure to report the information at the outset of the employer-employee relationship would have the effect of undermining the level of trust that exists between the parties. Engineering ethics is not about performing the minimum amount required but, instead, ought to be about going the extra mile to exceed the employer or clients requirements.

Conclusion:
Engineer F had an ethical obligation to report on the employment application the revocation of his contractor's license.

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