Advertising: Representations Made on Web site

Case No. 04-4

Facts:
Engineer A, a professional engineer licensed in four states, establishes a Web site, www.engineerseals.com, that indicates that Engineer A's company will seal professional engineering drawings for a standard prescribed fee per page. The information on the Web site states the following:

> "Get your project approved! Engineerseals.com provides a convenient, cost effective, way for you to obtain sealed documents from a registered engineer to meet your local or state requirements. The on-line questionnaires and confirmation processes help us determine the specific services you need. We will provide direct engineering supervision, and depending on your project, we will
>
> - Review and modify your plans, shop drawings, specifications, and calculations;
> - Generate the necessary drawings, plans, specifications, and reports;
> - Perform engineering investigation, evaluation, and consultation; or
> - Perform site visits
>
> Upon receipt of your information, we will contact you directly. Your responses help us to simplify the review process and ultimately help us customize the services to meet your needs. The next time you need plans reviewed for building construction codes and permit approvals, visit engineerseals.com. We'll help you get your remodeling, renovation, and new building projects from draft to development efficiently and professionally. The process is easy."

Question:
Was it ethical for Engineer A to develop a Web site in the manner indicated?

References:

Section II.2.b.	-	*NSPE Code of Ethics:*	*Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.*
Section III.3.	-	*NSPE Code of Ethics:*	*Engineers shall avoid all conduct or practice that deceives the public.*
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.8.a.	-	*NSPE Code of Ethics:*	*Engineers shall conform with state registration laws in the practice of engineering.*

Discussion:

Copyright © 2004 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

Over the years and on several occasions, the NSPE Board of Ethical Review has examined and addressed issues relating to advertising of professional engineering services. The customs, practices, and standards in this area have evolved significantly over the past half-century. During an earlier time period, advertising by engineers (or any profession for that matter) was considered undignified, inappropriate, even offensive to some on the grounds that advertising was "commercial" in nature while professional practice was a "calling" by which individuals should be selected by clients solely based upon their professional qualifications, reputation, and other meritorious criteria. However, during the 1960s, a series of rulings by the United States Supreme Court held that professional society code of ethics provisions prohibiting advertising violated commercial free speech and antitrust laws. Following those decisions, professional society code of ethics provisions in advertising were eliminated or modified to reflect the new reality—that advertising professional services was a fact of life and that only misleading or deceptive practices could and should be restricted.

Similarly, using price as a selection factor for professional services was at one time prohibited by many engineering society codes of ethics, including the NSPE Code of Ethics for Engineers. Again, however, following antitrust challenges by the United States Department of Justice during the 1970s, NSPE and other engineering societies were compelled to remove provisions from their codes of ethics and professional policies that restricted or prohibited competitive bidding for engineering services. However, the United States Supreme Court has made it clear that the antitrust laws do not require competitive bidding for engineering services. In addition, as noted in the U.S. Supreme Court decision in U.S. v. NSPE, (1) engineers and firms may individually refuse to bid for engineering services; (2) clients are not required to seek bids for engineering services; (3) federal, state, and local laws governing procedures to procure engineering services are not affected, and remain in full force and effect; (4) state professional societies and local chapters are free to actively and aggressively seek legislation for professional selection and negotiation procedures by public agencies; (5) state registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect, such that state registration boards with authority to adopt rules of professional conduct may adopt rules governing procedures to obtain engineering services; and (6) As noted by the Supreme Court, "nothing in the judgment prevents NSPE and its members from attempting to influence governmental action . . ."

To illustrate, in BER Case No. 79-6, Engineer A published an advertisement in the classified section of a daily newspaper under the heading, "Business Services," which read in full: "Consulting Engineer for Industry. Can reduce present process heating fuel consumption by 30% to 70% while doubling capacity in same floor space. For more information contact Engineer A, telephone 123-456-7890." In finding that Engineer A's advertisement was unethical, the NSPE Board of Ethical Review noted that the

Copyright © 2004 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

pertinent question is whether the text of the advertisement exceeds the limits imposed by the present code language, and particularly whether it is "misleading," or "deceptive," by making a "false statement or claim." It was apparent to the Board that Engineer A could not honestly make a factual statement about the savings to be expected by clients attracted by his advertisement, not even knowing who those clients might be, or the nature of their facilities. The Board concluded that the ostensible purpose of such a broad and sweeping claim of savings was to attract inquiries, presumably to be followed by a proper technical analysis of the client's problem or need. Said the Board, "…As noted by the United States Supreme Court in its decision striking down a total prohibition on the advertising of professional services, there are permissible standards limiting the type, form, and nature of professional advertising. Those permissible limits, as stated in the code provisions, are intended to avoid extreme claims or statements which might tend to deceive the public. Opening the door to proper forms of advertising did not give carte blanche to a type of advertising which rests on the premise of "buyer beware." The client is entitled to receive information about qualifications and kinds of services available from engineers, but only to the extent that such information is factual."

The reasoning expressed in BER Case No. 79-6 is instructive for the present case. While it was not unethical for Engineer A to develop a Web site to advertise Engineer A's engineering services or to list standard professional fees on the Web site, posting that information without knowing the scope and nature of the work may be misleading and deceptive to the public. In addition, it should be noted that as currently (and as presumably in the future) configured, the world-wide-web is accessible virtually everywhere. Some states licensure and other state laws and regulations currently restrict certain types of advertising and price proposals by engineers. In view of that fact, there is a distinct possibility that Engineer A's activities may have been inconsistent with some state engineering licensure laws and regulations. A fundamental professional obligation of all engineers is to conform to state licensure laws in the practice of engineering.

In addition, there is clear evidence under the facts that Engineer A's actions were in violation of the NSPE Code of Ethics Section II.2.b. Engineer A's proposed services constitutes "plan stamping" in many states, as Engineer A was not exercising "responsible charge" over the engineering work Engineer A was proposing to sign and seal.

Finally, the Board would note that nothing in its opinion is intended to limit new and innovative practice techniques, including the use of the internet, Web sites, or electronic practice.

Copyright © 2004 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

Conclusion:

Engineer A's actions were unethical because they were in violation of the NSPE Code of Ethics provisions relating to "responsible charge" and state licensure laws and Board rules of professional conduct.

BOARD OF ETHICAL REVIEW:

Louis L. Guy Jr., P.E., F.NSPE
William D. Lawson, P.E., NSPE
James D. Lesikar II, Ph.D, P.E., F.NSPE
William J. Lhota, P.E., NSPE
Robert L. Nichols, P.E., F.NSPE
Harold E. Williamson, P.E., NSPE
E. Dave Dorchester, P.E., F.NSPE, Chair

NOTE: The NSPE Board of Ethical Review (BER) considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

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.

This opinion is for educational purposes only. It may be reprinted without further permission, provided that this statement is included before or after the text of the case and that appropriate attribution is provided to the National Society of Professional Engineers' Board of Ethical Review.

Visit www.nspe.org and learn how to obtain additional NSPE Opinions (or call 800-417-0348).

Copyright © 2004 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).