Duty to Report Observations to Higher Management

Case No. 09-1

Facts:

Engineer A, a young professional engineer with expertise in software engineering, works for a hospital information technology department. He is assigned to work with the people in the intensive care unit (ICU). A computer user group, headed by the lead physician in the ICU, is forced to facilitate interface between a piece of commercial data processing software and various units in the ICU, including real-time patient monitoring devices.

From the manager on down, the computer user group is not technically up to the mark in experience or in education. The computer user group was falling significantly behind schedule. Engineer A learns that the group is seriously considering cutting back on testing in order to close the schedule gap. Appalled at this idea, Engineer A argues strongly against it with the corporate user group. In this case, Engineer A's arguments has some effect, but Engineer A is nevertheless given the clear impression that his long-term employment prospects with this organization are now significantly impaired. Apparently, part of the problem had to do with a reluctance on the part of hospital administration to clash with the physician who heads the computer user group. Engineer A feels that the basic problem is incompetence of the computer user group and he does not see how he could be effective on his own in combating it.

Question:

What are Engineer A's obligations under the circumstances?

References:

Section II.1.	-	*NSPE Code of Ethics:*	*Engineers shall hold paramount the safety, health, and welfare of the public.*
Section II.1.a.	-	*NSPE Code of Ethics:*	*If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.*
Section II.1.c.	-	*NSPE Code of Ethics:*	*Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.*
Section II.3.	-	*NSPE Code of Ethics:*	*Engineers shall issue public statements only in an objective and truthful manner.*
Section II 3.b.	-	*NSPE Code of Ethics:*	*Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.*
Section II.4.	-	*NSPE Code of Ethics:*	*Engineers shall act for each employer or client as faithful agents or trustees.*

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Discussion:
The obligation of engineers to report observations to higher authorities has been a critical issue considered by the Board on earlier occasions. The conflict between an engineer's obligation to loyally serve an employer or client must be balanced with the duty of the engineer to protect the public health, safety, and welfare.

One example of a case considered by the Board in this area is BER Case 89-7. In that case, an engineer 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 this engineer was to remain confidential. In addition, the client made clear that the building was being sold "as is," and the client was not planning to take any remedial action to repair or renovate any system within the building prior to its sale. The hired engineer performed several structural tests on the building and determined that the building was structurally sound.

However, during the course of providing services, the client confided in and informed the engineer that the building contained deficiencies in the electrical and mechanical systems which violated applicable codes and standards. While this engineer was not an electrical or a mechanical engineer, he did realize those deficiencies could cause injury to the occupants of the building and so informed the client. In his report, he made a brief mention of his conversation with the client concerning the deficiencies; however, in view of the terms of the agreement, the engineer did not report the safety violations to any third party.

In deciding that it was unethical not to report the safety violations to the appropriate public authorities, the Board noted that the facts presented in the case raised a conflict between two basic ethical obligations of an engineer: The obligation of the engineer to be faithful to the client and not to disclose confidential information concerning the business affairs of a client without that client's consent, and the obligation of the engineer to hold paramount the public health and safety.

Following careful analysis, the Board noted that the engineer had an obligation to go further than he had, under the facts. Said the Board, "matters of public health and safety must take precedence. The Code of Ethics is clear on this point. Section I.1. employs the word "paramount" to describe the obligation of the engineer with respect to the public health and safety." The Board concluded that the hired engineer could have taken other steps to address the situation, not the least of which was his paramount professional obligation to notify the appropriate authority if his professional judgment is overruled under circumstances where the safety of the public is endangered. Instead, he "went along" and proceeded with the work on behalf of the client.

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As the Board has stated on numerous occasions, no section of the Code should be read in a vacuum or independent of the other provisions of the Code. Section II.1.c. provides additional guidance in this case, making it clear that the hired engineer has an ethical obligation to refrain from disclosing information which he acquires during the course of providing professional services to the client unless first obtaining the client's consent to disclose. Importantly, however, this section also includes a relevant exception, which allows the engineer to disclose information acquired during the course of providing professional services to the client if such disclosure is authorized or required by law or by the Code. In other words, if the engineer has a legal or ethical responsibility to disclose the information in question, the engineer is released from the obligation to maintain confidentiality.

Turning to the facts in the present case, the Board believes that the facts establish a sufficient basis for Engineer A to continue his efforts to attempt to educate higher management about the risks associated with not correcting the engineering and management issues. While Engineer A is an employee and as such owes some duty of loyalty and duty of confidentiality to the employer, that duty does not extend to situations in which the public health and safety is being compromised and put at significant risk. Engineer A's failure to press ahead with his concerns could place the ICU patients at grave risk and also put the hospital, its board of directors, and employees at risk of liability. Depending upon the facts and circumstances, Engineer A may be required to exhaust all appropriate and available internal mechanisms and procedures to get hospital administration to focus on this critical issue. If unsuccessful, Engineer A may be required to take steps to report the issues to an appropriate authority as necessary.

Conclusion:

Engineer A has an ethical responsibility to attempt to educate the computer user group on the risks and consequences of inadequate testing of the system. If he is not successful, he should continue to make his case to hospital administration. If that fails, he should exhaust all appropriate and available internal mechanisms and procedures up to the body responsible for hospital administration. If Engineer A is still unsuccessful, they may be required to take steps to report the issue to an appropriate authority as necessary.

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