Public Health and Safety—Delay in Addressing Fire Code Violations

Case No. 13-11

Facts:

Engineer A, a fire protection engineer, is retained by Client to provide a confidential report in connection with the possible renovation of an old apartment building owned by Client. Engineer A conducts an audibility test of the fire alarm inside occupied residential units. The audibility test showed the alarm could not be heard within all of the residential units, which is in violation of the local fire code. The problem with the alarm may have existed since the time the building was constructed or when the fire alarm system was replaced in 1978.

Engineer A advises the Client regarding the results of the audibility tests and the code violation. In a follow-up telephone conversation with Client, Engineer A is told that the financing for the renovation has fallen through and that the renovation project will be delayed, which means that the problems with the fire alarm system will not be addressed immediately but in the future when funding is available. Engineer A is paid for his services.

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.b.	-	*NSPE Code of Ethics:*	*Engineers shall approve only those engineering documents that are in conformity with applicable standards.*
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 III.4.	-	*NSPE Code of Ethics:*	*Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.*

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Discussion:
Professional engineers play a critical role in advising their clients about local code requirements. Professional engineers have a fundamental obligation to act consistently with regard to such requirements because of their impact on the public health, safety, and welfare.

The NSPE Board of Ethical Review has considered several cases over the years that address similar issues as those raised in this case. One good example is BER Case No. 89-7 where 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 it clear to Engineer A that the building was being sold "as is" and he was not planning to take any remedial action to 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 was structurally sound. However, during the course of providing services, the client confided in Engineer A that the building contained deficiencies in the electrical and mechanical systems, which violated 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 informed 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 determining that it was unethical for Engineer A not to report the safety violations to the appropriate public authorities, the Board of Ethical Review first noted that the facts presented 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. In its review, the Board noted that NSPE Code of Ethics Section III.4 can be clearly understood to mean that an engineer has an ethical obligation not to disclose confidential information concerning the business affairs of any present client without the consent of that client. That provision makes no specific exception to the language. For example, the drafters of the NSPE Code could have provided exceptional circumstances, where such confidential information could be disclosed by the engineer; however, no such provisions have been included. After noting the significance of NSPE Code Section III.4, the Board stated:

> "We believe under the facts, NSPE Code Section II.1.c should be read in conjunction with NSPE Code Section II.1.a. The latter section refers to the primary obligation of the engineer to protect the safety, health, property, and welfare of the public. 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. We

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> further believe that matters of public health and safety must take precedence. The NSPE Code is clear on this point. NSPE Code Section I.1 employs the word 'paramount' to describe the obligation of the engineer with respect to the public health and safety."

Much of the same reasoning applies in the present case. Under this reasoning, in the present case Engineer A had an obligation to go further. As earlier stated, we believe under the facts, NSPE Code Section II.1.c should be read in conjunction with Code Section II.1.a. The latter section refers to the primary obligation of the engineer to protect the safety, health, property, and welfare of the public. 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, the Board believes that matters of public health and safety must take precedence. Again, the NSPE Code is clear on this point. Code Section II.1 employs the word "paramount" to describe the obligation of the engineer with respect to the public health and safety.

It is the Board's view that Engineer A's obligations hinge on his professional judgement regarding the level of risk posed by this fire code violation. An engineer with expertise in this area may determine the violation in this case to be an imminent and ongoing risk to the health, safety, and welfare of the building occupants. If Engineer A so determines the presence of such an imminent risk, he should immediately advise the Client that appropriate steps must be taken to protect the occupants of the building from the risks associated with the fire code violation. Then, if the Client does not address these issues, Engineer A would be obligated to report the violation to code enforcement officials. The Board further felt that the fire alarm defect in this case does in fact rise to the level of an imminent and ongoing public safety risk.

Conclusion:

Engineer A should immediately advise the Client that appropriate steps must be taken to protect the occupants of the building from the risks associated with the local fire code violation. If Engineer A determines there is an imminent and ongoing risk to the health, safety, and welfare of the building occupants, and if the Client does not address these issues, Engineer A would be obligated to report the violation to code enforcement officials.

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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, and university engineering departments), 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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