



Delaware –Ethics including DE Laws & Rules for Professional Engineers

Four (4) Continuing Education Hours
Course #DE101

Approved Continuing Education for Licensed Professional Engineers

*EZ-pdh.com
Ezekiel Enterprises, LLC
301 Mission Dr. Unit 571
New Smyrna Beach, FL 32170
800-433-1487
support@ez-pdh.com*



Course Description

The course is designed as a distance learning interactive course that enables the practicing professional engineer to 1) revisit the emphasis that his or her professional license has a direct and vital impact on the safety, health, and welfare of the public and 2) keep up to date on the legal aspects that govern the practice of engineering in the state of Delaware.

The Delaware four (4) Laws, Rules and Ethics course satisfies the continuing education requirement of minimum of 2 hours of Ethics.

This course also overviews the Delaware State laws governing the profession of engineering. An extra 2 hours are awarded and applies to the overall 24 hours of continuing education required for each DE licensed engineer.

The course consists of three major sections as outlined below.

1. Delaware Laws and Rules
 - a. Delaware Administrative Code
 - b. Administrative Penalty Guidelines
 - c. Continuing Education Guidelines
2. Code of Ethics
 - a. Delaware Code of Ethics
 - b. General Code of Ethics for all Professional Engineers
3. Ethics Case Reviews

Course Objectives

The objectives of this course is to:

1. Familiarize the student with the standards of professional behavior for adherence to the highest principles of ethical conduct,
2. Apply those principles in reviewing real case studies,
3. Familiarize the student with the laws and rules regulating the practice of engineering in the state of Delaware.

Upon successful completion of the course, the student will be well versed to exhibit the highest standards of honesty and integrity deemed paramount to his or her license and profession as well as be well versed in the Delaware state laws governing the practice of the engineering profession

Course Grading

Students must achieve a minimum score of 70% on the 30 question online quiz to pass this course.

The quiz may be taken as many times as necessary in order to successfully pass this course.

Note: The quiz can be completed over multiple sessions if required by selecting "Save Quiz" prior to exiting session.

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Delaware Administrative Code

TITLE 24. PROFESSIONS AND OCCUPATIONS CH.28 PROFESSIONAL ENGINEERS DELAWARE PROFESSIONAL ENGINEERS ACT

§2801. Short title.

This chapter shall be known and may be cited as the 'Delaware Professional Engineers Act.'

§2802. Declaration of purpose; unlawful practice.

In order to safeguard life, health, and property and to promote the public welfare, the practice of engineering in this State is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering in this State; to use in connection with such person's name, by verbal claim, sign, advertisement, letterhead, card or to in any other way, represent himself or herself to be an engineer, a professional engineer or through the use of some other title imply that such person is a professional engineer licensed under this chapter; or to advertise any title or description tending to convey the impression that such person is a professional engineer unless such person has been duly licensed, authorized or exempted under this chapter. The right to engage in the practice of engineering shall be deemed a personal right based on the qualifications of the individual as evidenced by such person certificate of licensure, which shall not be transferable.

§2802A. Exemption for expert testimony.

Nothing in §2802 of this title shall be construed as prohibiting an otherwise qualified engineer, duly licensed under the laws of a state other than Delaware, from offering expert testimony in any action or proceeding in the courts of this State, consistent with the requirements of Delaware Uniform Rule of Evidence 702.

§2803. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them, except where the context clearly indicates a different meaning;

(1) "Active roster" shall mean the record of members, associate members, permittees and holders of a certificate of authorization.

(2) "Adjunct member" shall mean an adjunct member of the Association, as defined in §2806(d) of this title.

(3) "Administrative Order" means an order issued by an Investigating Committee, with the prior approval of the Council pursuant to §2824(b)(1)g.1. of this title, which attempts to resolve a complaint of a violation under §2823 of this title. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service.

(4) "Affiliate member" shall mean an affiliate member of the Association, as defined in §2806 (c) of this title.

(5) "Applicant" shall mean a person who applies to become licensed as a professional engineer, applies to become certified as engineer intern, applies to become an adjunct member of the association, or applies for a certificate of authorization or permit.

(6) "Associate member" shall mean an associate member of the Association, as defined in §2806 (b) of this title.

(7) "Association" shall mean the Delaware Association of Professional Engineers.

(8) "Bylaw" shall mean a bylaw of the Association.

(9) "Certificate of authorization" shall mean an authorization issued by the Council to engage in the practice of engineering.

(10) "Committee" shall mean a committee appointed by the Council.

(11) "Consent Order" means a voluntary agreement between parties attempting resolution of a complaint of a violation under §2823 of this title or a complaint of unlicensed practice under §2825 of this title. To become a final order, a consent order must be approved by Council pursuant to §2824(b)(1)g.2 of this title.

(12) "Continuing Professional Competency" shall mean and refer to compliance with or satisfaction of a published set of guidelines and requirements for the maintenance of professional competency in the practice of engineering.

(13) "Council" shall mean the Council of the Association.

(14) "Engineer" shall mean a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by an engineering education, through graduation with a baccalaureate degree from a Council-approved 4-year educational

program in engineering, in engineering technology or in science related to engineering, is qualified to begin the path to licensure.

(15) “Engineering corporations or partnerships” are corporations or partnerships who practice engineering to provide engineering services to the public.

(16) “Engineer Intern” shall mean a person certified as an engineer intern by the Council.

(17) “Examination” shall mean any qualifying examination or examinations required by this chapter.

(18) “Hearing Committee” means a committee of Council members to which the Council has delegated authority to adjudicate a complaint of a violation under §2823 of this title or allegations of unlicensed practice under §2825 of this title.

(19) “Investigating Committee” means a committee of the Council to which the Council has delegated authority to investigate a complaint of a violation under §2823 of this title or allegations of unlicensed practice under §2825 of this title.

(20) “Licensed” means licensure as a professional engineer under this chapter.

(21) “Licensee” shall mean a person licensed as a professional engineer under this chapter.

(22) “Member” shall mean a member of the Association, as defined in §2806 (a) of this title.

(23) “Practice of engineering” or “to practice engineering” includes any professional service performed for the general public such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation in connection with any public or private buildings, structures, utilities, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved when such professional service requires the application of engineering principles and data, but it does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, neither does it include engineering services performed by an employee of a firm or corporation that does not offer professional engineering services to the general public.

(24) “Professional engineer” shall mean a person who has been duly licensed as a professional engineer by the Council.

(25) “Responsible Charge” means a professional engineer’s supervision of, control over, and possession of detailed professional knowledge of an engineering work. A professional engineer is only considered to be in responsible charge of an engineering work if the professional engineer makes independent professional decisions regarding

the engineering work without requiring instruction or approval from another authority and maintains control over those decisions by the professional engineer's physical presence at the location where the engineering work is performed or by electronic communication with the individual executing the engineering work. (26) "Retired Member" shall mean a person who has elected to claim retired status as defined in §2806(g) of this title.

(27) "Substantially related" shall mean the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of engineering.

§2804. Delaware Association of Professional Engineers; Objectives.

There is hereby established the Delaware Association of Professional Engineers, an instrumentality of the State. The objectives of the Association and of this chapter are to: regulate the practice of engineering; to provide for the registration of qualified persons as professional engineers and the certification of engineer interns; to define the terms "engineer", "professional engineer", "engineer intern" and "the practice of engineering"; to create an organization to regulate the practice of engineering; to provide and administer qualifying examinations and grant registration to qualified persons as professional engineers; to provide for the appointment and election of members to the governing body of this Association; to define the powers and duties of the Council; to set forth the minimum qualifications and other requirements for registration as a professional engineer; for certification as an engineer intern; the granting of a permit to practice engineering, and the granting of a certificate of authorization; to set rules for the establishment of fees, expiration requirements and renewal requirements; to establish continued professional competency guidelines and requirements; and to provide for the enforcement of this chapter together with penalties for violations of the provisions of this chapter.

§2805. Ownership and use of property.

The Association may purchase, acquire, or receive by gift or bequest for the purposes of the Association and furtherance of its objectives, but for no other purposes or objectives, any real or personal property, and may sell, mortgage, lease, or otherwise dispose of any said property.

§2806. Membership

(a) All persons licensed as professional engineers on July 7, 1972 or hereafter licensed as professional engineers and who are residents of or are employed in or have a place of business within the State, and who subscribe to the code of ethics in

accordance with §2816 of this title, are members of the Association. Members shall be entitled to vote as provided by this chapter.

(b) All other persons licensed as professional engineers, and who subscribe to the code of ethics in accordance with §2816 of this title, are associate members of the Association and shall not be entitled to vote.

(c) All persons certified as engineer interns within the State on July 7, 1972 or who are hereafter certified as engineer interns, and who subscribe to the code of ethics in accordance with §2816 of this title, are affiliate members of the Association and shall not be entitled to vote. Affiliate members may use the titles 'Engineer', 'Engineer Intern' or 'E.I.'

(d) All persons meeting the definition of engineer, as set forth in §2803(13) of this title, and who subscribe to the code of ethics in accordance with §2816 of this title, who are residents or employed in or have a place of business in the State, are adjunct members of the Association and shall not be entitled to vote. Adjunct members may use the title 'Engineer'.

(e) **Fees.**

(1) All fees for licensure, membership and renewals shall be in accordance with the bylaws, as approved by the members in accordance with this chapter.

(2) All fees required under the provisions of this section shall be nonreturnable and nontransferable.

(3) Reinstatement fees for professional engineers and holders of certificates of authorization shall be required for return from the inactive roster to the active roster. Reinstatement fees shall be established by bylaw and shall include any unpaid supplemental levies assessed prior to removal from the active roster.

(4) The Council may, whenever the Association has incurred an operating deficit, make a supplemental levy in order to eliminate such deficit. Each member, associate member and each holder of a certificate of authorization shall be assessed in direct proportion to their rate of annual renewal and the total amount assessed shall be the amount of the deficit. Fractional assessments shall be raised to the next highest even dollar amount. The amount assessed against any person pursuant to this paragraph shall not exceed the annual renewal fee paid by such person under this chapter. Such supplemental levy shall be a debt against those assessed and shall be billed only at the time when the annual renewal fees are billed and must be paid within 3 months. Those failing to pay within 3 months shall be declared ineligible to practice engineering in the State and shall be removed from the active roster. Reinstatement will not be allowed until the reinstatement fee has been paid in full.

(f) Expiration and renewals.

(1) Members, associate members, adjunct members, and holders of certificates of authorization shall be billed for renewal fees 60 days before expiration of the period for which fees have been paid. If fees are not paid by the expiration date, the member, associate member or holder of a certificate of authorization shall be declared ineligible to practice engineering in the State and shall be removed from the active roster.

(2) Any applicant, associate member, adjunct member, engineering corporation or partnership whose application is approved shall be billed for fees for the quarter-year in which approved and for any remaining full quarters in the Association's licensure period.

(3) Any member, associate member, or holder of certificate of authorization on the active roster who intends to withdraw from the practice of engineering in the State shall notify the Secretary of the Council in writing. That name will then be removed from the active roster and be placed in an inactive status file. That name may be reinstated to active status by a request for reinstatement, in writing, within 4 years of that removal from the active roster, to the Secretary of the Council, by payment of a reinstatement fee and by compliance with and satisfaction of the current Continuing Professional Competency guidelines and requirements. After the expiration of the 4 year period, reinstatement may be obtained only by reapplying for licensure pursuant to §2817 of this title or for a certificate of authorization pursuant to §2821 of this title. Any member, associate member or holder of a certificate of authorization in inactive status shall be ineligible to practice engineering in the State.

(4) Any member, associate member, or holder of a certificate of authorization who has not given notice of withdrawal and whose name has been removed from the active roster because of a delinquency in payment of fees, may be reinstated upon petition to the Council within two years of the removal from the active roster and by payment of the reinstatement fees plus any delinquency fees. After the expiration of the two year period, reinstatement may be obtained only by reapplying for licensure pursuant to §2817 of this title or for a certificate of authorization pursuant to §2821 of this title.

(g) Any member, associate member or adjunct member in good standing on the active roster who intends to retire from the practice of engineering in the State shall notify the Secretary of Council in writing on a form provided to such Member by Council at such member's request. Following the filing of this form with the Secretary of Council, the member's name will be removed from the active roster and placed in a retired status file. Retired members shall not be required to pay their biennial membership fee and shall be exempted from any Continuing Professional Competency

requirements. Any member, associate member or adjunct member in retired status shall be ineligible to practice engineering in the State, however, a retired member shall be entitled to utilize the term “P.E. (ret.)” in any signature and shall be entitled to vote provided they are residents of the State and subscribe to the code of ethics in accordance with §2816 of this title. After being placed on the retired status file, the retired member may not apply for reinstatement.

§2807. Council of the Delaware Association of Professional Engineers.

(a) There shall be a Council which will be the governing board of the Association. The Council shall consist of 15 voting members, 12 of whom shall be elected, and 3 of whom shall be appointed by the Governor. The immediate past president, if not an elected member of Council, shall be a non-voting member of Council. A quorum of the Council shall be a majority of the seated members of the Council.

(b) The 12 elected members shall be elected and hold office on the basis of the following constituencies:

(1) One shall be from each of the following 5 engineering disciplines: Civil, chemical, electrical, mechanical and any other;

(2) One shall be from each of the following fields of employment: Government, industry, private consulting practice and education: and

(3) One shall be from each of the 3 counties: New Castle, Kent and Sussex.

(c) Of the three appointed members, one shall be from each of the three counties: New Castle, Kent and Sussex.

(d) (1) A person elected as a Council member shall, at the time of election, and during the term of office, be a citizen of the United States of America, a resident of the State, a member of the Association and be qualified to represent the constituency from which the person was elected.

(2) A person appointed as a Council member shall, at the time of appointment, and during the term of office, be a citizen of the United States of America and a resident of the State and of the county for which the appointment is designated.

(e) The term of office for members of Council shall, unless otherwise specified, be four (4) years. A member of Council, whether appointed or elected, may not serve more than two (2) consecutive terms on the Council.

(f) Three members of Council shall be elected each year for a four (4) year term to fill vacancies in the field of discipline, field of employment and county of residence.

Each Council vacancy will be designated by discipline, field of employment or county of residence in accordance with the constituency designation specified in subsection (b) of this section and each designated vacancy will be voted upon separately by members of the Association. A candidate for Council must announce at the time of nomination or petition the vacancy for which that candidate is seeking election and the candidate must be qualified by discipline, field of employment or residence to fill the vacancy for which that candidate is seeking election. For purposes of election, the candidate discipline shall be that shown on the roster, the field of employment shall be that held by the candidate and the county of residence shall be that of the candidate at the time of nomination or petition as well as at the time of election. The terms of office for Council members shall commence on September 1 of the year elected or appointed and shall expire on August 31, of the year ending the term.

§2808. Council election and appointment procedure.

(a) The schedule for the election of the twelve (12) elected members shall be as follows:

(1) Three members representing the constituencies of: civil engineering, industry and New Castle County shall be elected in 1978 and every four years thereafter.

(2) Three members representing the constituencies of: electrical engineering, private consulting practice and Kent County shall be elected in 1979 and every four years thereafter.

(3) Three members representing the constituencies of: mechanical engineering, education and Sussex County shall be elected in 1980 and every four years thereafter.

(4) Three members representing the constituencies of: chemical engineering, government and any other engineering discipline not previously designated shall be elected in 1981 and every four years thereafter.

(b) The schedule for the appointment of the three (3) appointed members shall be as follows:

(1) One member from New Castle County shall be appointed in 1994 and every four years thereafter.

(2) One member from Kent County shall be appointed in 1993 and every four years thereafter.

(3) One member from Sussex County shall be appointed in 1991 and every four years thereafter.

(c) All appointments to the Council shall be made by the Governor in accordance with the above schedule and with the requirements of §2807 of this title. Each term of

office of the appointed Council members shall expire on the date specified in the appointment, however, the Council member shall remain eligible to participate in Council proceedings unless and until replaced by the Governor.

(d) The twelve Council members shall be elected by members of the Association through the procedure determined by Council, including, without limitation, electronic voting. The members in contest for each elected Council position receiving a plurality of votes from those voting within the prescribed time for that Council position shall be declared elected to that Council position.

§2809. Annual Election of Officers.

The President, Vice-President, Secretary and Treasurer of the Council shall be elected annually from among the Council members by vote of the Council. No Council President or Vice- President may serve more than 2 consecutive 1-year terms in office.

§2810. Powers of the Council.

(a) The Council, under the head of the Council President or the President's designee and seal of the Council, may issue subpoenas for named respondents, witnesses, documents, physical evidence or any other source of evidence needed during the investigation of the complaint and/or for a public hearing on the complaint and/or in a matter involving an application for licensure, the revocation of licensure, or practicing or offering to practice without licensure, or any other matter pursuant to the provisions of this chapter. If the party or person subpoenaed fails to comply, the Council may compel compliance with said subpoena by filing a motion to compel in the Superior Court which shall have jurisdiction. The Superior Court may order costs, attorney's fees and/or a civil fine not to exceed \$5,000 if the motion to compel is granted.

(b) Any member of the Council may administer oaths or affirmations to witnesses appearing before the Council.

(c) The records of the Council shall be prima facie evidence of the proceedings of the Council set forth therein. A transcript thereof, duly certified by the Secretary of the Council under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

(d) Except as provided for in §2804 of this title the Council may not create or promulgate rules or regulations to extend, modify, or in any way supplement the provisions of this chapter governing the regulation or the practice of engineering or the qualification, certification, or licensure of engineers, professional engineers, or engineer interns.

(e) The Council may, in its sole discretion, delegate its authority to investigate allegations of licensee or applicant violations under §2823 of this title or allegations of unlicensed practice under §2825 of this title to an Investigating Committee.

(f) The Council may, in its sole discretion, delegate its authority to adjudicate allegations of licensee or applicant violations under §2823 of this title or allegations of unlicensed practice under §2825 of this title to a Hearing Committee in accordance with §2824(b)(2) of this title.

§2811. Council Vacancies.

(a) Where any member of Council is absent from three consecutive meetings of the Council without suitable or acceptable reason or becomes incapacitated, the office may be declared vacant by the Council.

(b) When any member of Council resigns, dies, moves that member's residence from the State or otherwise ceases to be a member, or in the case of an elected member who changes that member's engineering discipline in the roster if elected to fill a discipline position on the Council, or in the case of an elected member who changes that member's field of engineering employment if elected to fill a field of engineering employment position on the Council, or in the case of an elected or an appointed member who changes that member's county of residence if elected to fill a county residency position, the office shall be declared vacant.

(c) A declared vacancy of an appointed Council position shall be filled for the unexpired term by appointment by the Governor of the State of a person meeting the qualifications required to hold that appointed Council seat. A declared vacancy of an appointed Council position may, upon a majority vote of Council, be temporarily filled by the former Council member until a new person meeting the qualifications required to hold that appointed Council seat is appointed by the Governor.

(d) A declared vacancy of an elected Council seat shall be temporarily filled either by the former Council member or by a member meeting the qualifications required to hold that Council seat by virtue of a discipline or employment or county of residence, upon the vote of a majority of the Council, until the next annual election when a member shall be elected to fill any remainder of the unexpired term.

§2812. Administration.

The Council may appoint or employ such administrative officials as it deems fit.

§2813. Immunity of Council and Committees.

(a) The Council and the members of any committees appointed by the Council are immune from any claim, suit, liability, damages, or any other recourse, civil or criminal,

arising from any act, omission, proceeding, decision, or determination undertaken or performed, or from any recommendation made, so long as the Council or committee member acted in good faith and without gross negligence in carrying out the responsibilities, authority, duties, powers, and privileges conferred by law upon them, with good faith being presumed.

(b) The Attorney General's office shall represent the Council, Council members, Council officials, any committee created by Council or committee member, and at the express request of the Council, any person appointed or employed by the Council in a civil action for damages arising from duties and services performed, or powers to be exercised for the state. If the Attorney General's office determines it would be improper or unlawful to undertake such representation, then representation of such parties should proceed in accordance with §3925 of Title 10.

§2814. Bylaws of the Association.

(a) The Council shall prepare for approval by the membership the following bylaws related to the administrative and domestic duties of the Association:

- (1) Prescribing procedures for the nomination of members of Council by a nominating committee and by the nomination by members;
- (2) Prescribing procedures for the election of members of the Council;
- (3) Prescribing procedures for the nomination and election of Council President, Vice President, Secretary and Treasurer by the Council;
- (4) Prescribing the duties of members of the Council and rules governing their conduct;
- (5) Respecting the remuneration and reimbursement of members of the Council;
- (6) Respecting the calling, holding and conducting of meetings of the Council and of the Association;
- (7) Respecting the management of the property of the Association;
- (8) Providing for the borrowing of money on the credit of the Association and the charging, mortgaging or pledging of the real or personal property of the Association to secure any money borrowed or other debt or other obligation or other liability of the Association;
- (9) Respecting the receipt and disbursement of the funds of the Association and the investment of funds in a savings account which must be in a bank located within the State for the purpose of earning interest on the investment;

(10)Respecting the establishment of a reserve fund within a year of the initial election of Council for emergency or unforeseen expenses;

(11)Providing for an annual independent audit of the accounts of the Association;

(12)Providing for the appointment of committees of the Council and defining their composition, functions, remuneration and reimbursement;

(13)Providing for the closing of the roster and the registration of recorded changes of addresses or disciplines of the registrants for a period of 20 calendar days immediately preceding any meeting of the Association or any mailing of ballots for vote or election by the membership;

(14)For maintaining a system for the recording of registrants, their disciplines, their residence and business addresses and the counties in which they are resident, recording of the names and addresses of official representatives of engineering corporations and partnerships, and other pertinent data. The official roster of the Association shall be printed at least biannually and be available to the membership;

(15)Fixing and providing for the levying and collection or remitting of annual or other fees approved by the members in accordance with this chapter.

(16)Prescribing applications, certificates, permits and seals and providing for their issuance and use;

(17)Concerning bonding of officers of the Council and employees of the Association;

(18)Respecting all other things that are deemed necessary or convenient for the attainment of the objectives of the Association and the efficient conduct of its business.

§2815. Bylaw approval by members.

A bylaw is effective when approved by the members. Proposed bylaws or changes shall be submitted to the members for approval by means of a letter ballot returned by not less than 20 percent of the members within 30 days after the mailing thereof. Affirmative votes by the majority of members voting within the prescribed time shall constitute approval by the members.

§2816. Code of Ethics.

(a) The Council shall prepare and publish a code of ethics designed for the protection of the public.

(b) All applicants, members, associate members, affiliate members, adjunct members, holders of certificate of authorization and permittees must subscribe to and

follow this code of ethics in the practice of professional engineering, or in seeking to register as a professional engineer or seeking certification as an Engineer Intern.

(c) The Code of Ethics is available on the Delaware Association of Professional Engineers' website.

§2817. Requirements for licensure.

(a) The following requirements for the 3 essential components of Education, Experience, and Examination shall be considered as the minimum satisfactory evidence that an applicant is qualified for licensure as a professional engineer:

(1) Graduates from an engineering educational program approved by the Engineering Accreditation Commission (EAC) of ABET, Inc. (formerly the Accreditation Board for Engineering and Technology) or from an ABET recognized foreign accreditation agency approved educational program or an engineering educational program approved by an accrediting agency that is a signatory to the Washington Accord.

a. Graduation with a baccalaureate degree from an engineering educational program accredited by the EAC of ABET, Inc. or by a foreign educational program accreditation agency adjudged by ABET to use substantially equivalent accreditation procedures; or by an accrediting agency that is a signatory to the Washington Accord; and

b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 4 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and

c. Successful passing of an examination approved by Council; and d. Meeting the additional requirements of paragraph (7) of this section.

(2) Graduates from non-EAC of ABET accredited engineering programs, from engineering technology programs or from science programs related to engineering.

a. Graduation with a baccalaureate degree from a Council approved 4-year educational program in engineering that is not EAC of ABET accredited, in engineering technology or in science related to engineering; and 11

b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 8 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and

c. Successful passing of an examination approved by Council; and

d. Meeting the additional requirements of paragraph (7) of this section.

(3) Graduates from non-EAC of ABET accredited engineering programs, from engineering technology programs or from science programs related to engineering who hold master's degrees in engineering from institutions that offer EAC of ABET-accredited engineering programs, or the equivalent:

- a. Graduation with a baccalaureate degree from a Council approved 4-year educational program in engineering that is not EAC of ABET accredited, in engineering technology or in science related to engineering; and
- b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 5 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and
- c. Successful passing of an examination approved by Council; and
- d. Meeting the additional requirements of paragraph (7) of this section.

(4) Graduates from non-EAC of ABET accredited engineering programs, from engineering technology programs or from science programs related to engineering who hold doctoral degrees in engineering from institutions that offer EAC of ABET-accredited engineering programs, or the equivalent:

- a. Graduation with a baccalaureate degree from a Council approved 4-year educational program in engineering that is not EAC of ABET accredited, in engineering technology or in science related to engineering; and
- b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 4 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and
- c. Successful passing of an examination approved by Council; and
- d. Meeting the additional requirements of paragraph (7) of this section.

(5) Engineering Experience and Examination.

- a. Professional experience in engineering work of a character satisfactory to the Council, consisting of 15 years or more of lawful practice and indicating that the applicant is competent to practice as a professional engineer; and
- b. Successful passing of an examination approved by Council; and
- c. Meeting the additional requirements for paragraph (7) of this section.

(6) Comity.

- a. The Council may, upon application and payment of the required fee and without further examination, issue a license as a professional engineer to any person

holding a valid certificate of registration or a license as a professional engineer issued to that person by a proper authority of a state, territory or possession of the United States, the District of Columbia, or a province or territory of Canada, provided the applicant's certificate or license is in good standing as defined in paragraph (9) of this section, and the applicant's qualifications meet at least one of the following:

1. The professional engineering qualifications of the applicant on the effective date of such certificate of registration or a license would have satisfied the requirements for licensure in this State on that date.

2. The professional engineering qualifications of the applicant at any time subsequent to the effective date of such certificate of registration or a license would have satisfied the requirements for licensure in this State in effect at that time. A personal interview may be required by Council to ascertain the facts in the case.

3. The professional engineering qualifications of the applicant include successful passing of an examination approved by Council, meeting the additional requirements of paragraph (7) of this section, and having a minimum of 10 years of professional experience in engineering work of a character satisfactory to the Council, such experience indicating that the applicant is competent to practice as an engineer. At least 8 years of the applicant's experience shall have been obtained after the applicant has received the said valid certificate of registration or a license.

4. The professional engineering qualifications of the applicant include a minimum of 5 years of continuous and verifiable experience as a professional engineer. The applicant must meet the additional requirements of paragraph (7)a. of this section.

5. An applicant holding a valid NCEES Council Record issued by the National Council of Examiners for Engineering and Surveying, whose qualifications meet the requirements of this chapter, may be registered by Council as a professional engineer upon receipt from the National Council of Examiners for Engineering and Surveying of a certified copy of such registration Record.

6. An applicant who has been designated as a "Model Law Engineer" by the National Council of Examiners for Engineering and Surveying. Such person may be issued a license administratively without Council review.

- b. The Council may, upon application and payment of the required fee, issue a license as a professional engineer to an applicant who is an International Professional Engineer (IntPE) registrant under the International Engineering Alliance (IEA) International Professional Engineers Agreement (IPEA). The applicant's IntPE registration must be current and in good standing as defined in paragraph (9) of this

section. Such applicant must also have 5 years of experience obtained after receipt of the initial license.

c. If the person who has been licensed in Delaware pursuant to paragraph (6) a. or b. of this section has that person's license to practice revoked in the state in which the person was registered or licensed at the time licensure in Delaware through comity was sought, then the authorization issued in Delaware shall be automatically revoked followed 30 days' written notice from the Council unless the person makes application to the Council for consideration for retaining the Delaware authorization and the Council acts favorably on such application..

(7) Additional Requirements.

a. Every applicant shall give not less than 5 references, people who state that in their opinion and by their personal knowledge the applicant is qualified to practice as a professional engineer. At least 3 such references shall be registered or licensed professional engineers in this or any other state or territory or possession of the United States, the District of Columbia, or the province or territory of Canada or an International Professional Engineer (IntPE) registrant under the International Engineering Alliance (IEA)..

b. An applicant, otherwise qualified, shall not be required to be actively practicing the applicant's profession at the time of application.

c. Every applicant must demonstrate knowledge of the Delaware Professional Engineer's Act and the Code of Ethics to the satisfaction of the Council.

d. The required examination shall consist of a Fundamentals of Engineering examination and a Principles and Practice of Engineering examination furnished by, and scored by, the National Council of Examiners for Engineering and Surveying, or other nationally normed examinations which are approved by the Council.

e. The examination in the Fundamentals of Engineering shall be taken after graduation, except it may be taken by a college or university senior in good academic standing in an educational program leading to a baccalaureate degree in engineering, related science or engineering technology. The Council may permit other students in such programs to take the Fundamentals of Engineering examination prior to graduation.

f. The examination in Principles and Practice of Engineering shall not be taken until after the satisfactory completion of the educational requirements as outlined in subsections § 2817(1)-(4) of this section or the experience requirements of subsection (5). The order in which examinations are taken relative to when an applicant's

professional experience under subsections § 2817(1)-(4) is acquired shall not be considered.

g. Applicants with four failures of the Principles and Practice of Engineering examination may only apply to retake the examination after completing the following:

(1) Present three new references to the Council, at least two of whom must be registered or licensed professional engineers in this or any other state or territory or possession of the United States, the District of Columbia, or any province or territory of Canada, pursuant to paragraph (7)a. of this section; and

(2)(i) successful completion of six (6) college-level semester credit hours that are preapproved by Council to assure that the courses adequately address the subject matter weaknesses outlined in the diagnostic report resulting from the preceding failure of the Principles and Practice of Engineering Examination. Applicants must provide official transcripts of the courses that were taken demonstrating that a grade of "C minus" or higher was achieved; or

(ii) submit such documentation to Council that demonstrates, to Council's satisfaction, that the applicant has acquired at least two (2) years of additional engineering experience, including a brief summary explaining how that experience has better prepared the applicant to pass the examination; or

(iii) submit such documentation to Council that demonstrates, to Council's satisfaction, that the applicant has acquired sufficient educational and engineering experience, including a brief summary explaining how that educational and engineering experience has better prepared the applicant to pass the examination.

(3) On the fifth and all subsequent attempts, applicants must reapply and meet the requirement stipulated in paragraphs (7)g.1. and 2. of this section above.

(8) Applicants for licensure as a professional engineer shall be exempt from the requirement to pass the Fundamentals of Engineering Examination, if they are qualified as follows:

a. An individual holding an earned doctoral degree in engineering from a university, which has an undergraduate program, accredited by ABET or by an accrediting agency that is a signatory to the Washington Accord, in that discipline at the time that individual earned the doctoral degree, providing that doctoral degree required the passing of a Ph.D. qualifying examination from that university; or,

b. An individual holding a baccalaureate degree from a Council-approved 4 year engineering educational program, who has at least fifteen (15) years of professional experience in the lawful practice of engineering of a character satisfactory

to the Council, and which indicates that the applicant is competent to practice as a professional engineer.

(9) The Council may refuse an applicant for licensure if the Council finds that the applicant has:

- a. Been convicted of a crime that is substantially related to the practice of engineering; or
- b. Misstated or misrepresented a fact in connection with the applicant's application; or
- c. Been found guilty of a violation of this chapter or of the Delaware Association of Professional Engineers' Code of Ethics; or
- d. Engaged in the practice of engineering in this State without being licensed as a professional engineer. Notwithstanding such a finding, the Council may allow licensure of such applicant if the applicant presents to the Council suitable evidence of reform; or
- e. Used improper means to gain information usable by the applicant on or in connection with an examination taken by the applicant to obtain licensure as a professional engineer or certification as an Engineer Intern.
- f. Been disciplined by another jurisdiction, state, territory, or possession of the United States, the District of Columbia, foreign country, the United States government, or any other governmental entity, if at least 1 of the grounds for discipline is the same or substantially equivalent to those contained in §2823 of this title; or
- g. Voluntarily surrendered an engineering license in order to avoid disciplinary action by another jurisdiction, state, territory, or possession of the United States, the District of Columbia, foreign country, the United States government, or any other governmental entity, if at least 1 of the grounds for discipline is the same or substantially equivalent to those contained in §2823 of this title.

(10) Where an application of a person has been refused or rejected, and such applicant feels that the Council has acted without justification, has imposed higher or different standards for that person than for other applicants, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

§2818. Experience and Educational Equivalence.

(a) For applicants holding a baccalaureate degree in engineering as described in §2817(1)a. of this Title, the experience of a full-time faculty member teaching advanced engineering subjects in an ABET-accredited, or CEAB-accredited engineering curriculum

may be accepted as part of the professional experience specified in §2817(1) or (2) of this title.

(b) For applicants holding a baccalaureate degree in engineering as described in §2817(1)a. of this Title, the award of a master's degree in engineering involving 1 year or more of post graduate study in an engineering educational program approved by the Council may be accepted as 1 year of professional experience required in §2817 of this title; or

(c) For applicants holding a baccalaureate degree in engineering as described in §2817(1)a. of this Title, the award of a doctorate, with or without a master's degree, involving full-time postgraduate study in an engineering educational program approved by the Council may be accepted as two years of professional experience required in §2817 of this title.

§2819. Requirements for Certification as an Engineer Intern.

The following shall be considered as minimum satisfactory evidence that the applicant is qualified for certification as an engineer intern:

(1) Graduation with a baccalaureate degree from an engineering educational program accredited by the Accreditation Board of Engineering and Technology (ABET), or by a foreign educational program accreditation agency adjudged by ABET to use substantially equivalent accreditation procedures, or from a Council-approved educational program in engineering not accredited by ABET or an ABET-approved foreign educational program accreditation agency, engineering technology or science related to engineering; and

(2)a. Council-approved professional experience of 15 years or more; or

b. Successful passing of a Fundamentals of Engineering examination.

§2820. Qualifications for a temporary permit. (Repealed)

§2821. Certificate of authorization.

(a) An engineering corporation or partnership must have a certificate of authorization in order to practice, or offer to practice, engineering as defined in this chapter.

(b) The practice of or offer to practice engineering for the public by an engineering corporation or partnership which has been issued a certificate of authorization is permitted, provided that 1 of the officers or 1 of the employees of the said engineering corporation or partnership:

(1) is designated as being in responsible charge of the engineering activities and engineering decisions of the said corporation or partnership; and

(2) is a licensee.

(c) All personnel of any such engineering corporation or partnership who practice engineering on its behalf shall be licensees. The requirements of this chapter shall not prevent an engineering partnership or corporation and its employees from performing engineering services for the said engineering partnership or corporation or its subsidiaries or for affiliated corporations.

(d) An engineering corporation or partnership desiring a certificate of authorization shall file with the Council an application listing the names and addresses of all officers, board members and principals of the engineering corporation or partnership and also of any licensee who shall be in responsible charge of the practice of engineering through the said engineering corporation or partnership, together with any other information required by the Council. The same information must accompany the annual renewal fee. In the event there shall be a change in any of these persons during the year, such change shall be filed with the Council within 30 days after the effective date of such change. If all the requirements of this section are met, the Council shall issue a certificate of authorization to such engineering corporation or partnership, and such engineering corporation or partnership shall be authorized to contract for and to collect fees for furnishing engineering services.

(e) The Council may refuse or reject an applicant if, the Council finds that the applicant has practiced engineering without being authorized under this section. Notwithstanding such a finding, the Council may allow licensure of such applicant if the applicant presents to the Council suitable evidence of reform.

(f) No such engineering corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of this compliance with the provisions of this section, nor shall any individual practicing engineering be relieved of responsibility for engineering services performed by reason of this employment or relationship with such corporation or partnership.

(g) Applicants for a certificate of authorization must comply with the applicable state tax laws of Chapter 23 of Title 30. Proof of such compliance is required by the Council prior to the issuance of a certificate of authorization.

(h) A licensee who practices, or offers to practice, engineering under a name other than the person's licensed name is required to obtain a Certificate of Authorization, or to practice under a Certificate of Authorization.

§2822. Public works.

(a) The State, its political subdivisions, agencies, commissions and authorities shall not solicit or receive proposals for, or engage in, the construction of public works involving the practice of engineering as defined in this chapter, unless:

(1) The engineer, partnership or corporation which will perform and/or take responsibility for all engineering work, as identified in the proposal, is authorized to practice engineering under this chapter at the time of submission of the proposal; and

(2) The engineering study, drawings, specifications and estimates are prepared by, and the construction is executed under the responsible charge or direct supervision of a licensee or permittee.

(b) Any contract executed in violation of this section shall be null and void.

§2823. Grounds for discipline; appeals.

(a) Applicants, adjunct and affiliate members, and any person licensed under this chapter shall be subject to disciplinary penalties set forth in §2824(c) of this title, if, after a hearing, the person is found to violate any of the following:

(1) The practice of any fraud or deceit in the attempt to obtain any authorization to practice engineering in this State;

(2) Any gross negligence, incompetence or misconduct in the practice of engineering; (3) Violation of the code of ethics promulgated by the Council;

(4) A crime that is substantially related to the practice of engineering;

(5) a. An activity resulting in discipline by another jurisdiction, state, territory, or possession of the United States, foreign country, the District of Columbia, the United States government, or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this section;

b. The voluntary surrendering of an engineering license in order to avoid disciplinary action by another jurisdiction, state, territory, or possession of the United States, foreign country, the District of Columbia, the United States government, or any other governmental agency, if at least one of the grounds for disciplinary is the same or substantially equivalent to those contained in this section.

(6) The failure to report instances of out-of-state discipline, as set forth in the immediately preceding paragraph, to the Executive Director of the Delaware Association of Professional Engineers within 60 days of the final order imposing discipline;

(7) Aiding or abetting another person in violating any provision of this chapter;
or

(8) Signing, affixing the licensee's seal, or permitting the licensee's seal or signature to be affixed to any specification, report, drawing, plan, plat, design information, construction document or calculation, or revision thereof, that has not been prepared by the licensee or those under his responsible charge;

(9) Failure to comply with and satisfy the Continuing Professional Competency guidelines and requirements.

(b) The Council shall have the power to review the actions of any applicants sitting for any examination that is conducted by, or on behalf of, the Association to determine the applicant's qualification for licensure as a professional engineer or certification as an Engineer Intern.

(1) The following actions by an examinee shall be considered violations of this chapter:

a. Any attempt to remove, or removal of, examination materials or content from the room in which the examination is administered;

b. Any attempt to reproduce, transcribe or transmit the content of examination materials that would permit the removal of such content from the room in which the examination is administered;

c. Any use or possession of unlawfully obtained information that reveals, or is procured by the examinee with the anticipation that it could reveal, any portion of the content of the current examination;

d. Any communication, whether verbal, written, electronic, or by action, made in an effort to seek assistance from another party, that would aid in obtaining a higher grade for the examination during an examination administration, or to provide such assistance to another examinee;

e. Any impersonation, or solicitation of impersonation, that allows another individual to sit for the examination in place of the designated applicant; or

f. Any violation of the terms of any examination security agreement entered into freely by the examinee with the Association outlining the examinee's responsibilities in taking the examination.

(2) The chief proctor for the examination, acting on behalf of the Council, may at the chief proctor's sole discretion, when presented with evidence of any violation under paragraph (b)(1) of this section above at any time during the examination administration period:

- a. Collect any examination materials provided to the examinee;
- b. Collect any personal property belonging to the examinee, which the proctor reasonably believes may contain content from the examination materials;
- c. Dismiss the examinee from the examination site; and
- d. Seek any law enforcement assistance that the chief proctor feels is necessary to affect paragraphs a. through c. above of this paragraph (b)(2) of this section.

(3) Following its review of the facts associated with any alleged examination impropriety, Council shall have the power to impose any or all of the following penalties on any individual found guilty after a hearing, unless such hearing is waived by the examinee, of an examination impropriety:

- a. Void the results of the subject examination.
- b. Refuse permission for the examinee to take the examination for a period of two (2) years, or such time determined by Council to be required to ensure that a subsequent examination is unlikely to repeat questions contained in the subject examination;
- c. Require successful completion by the examinee of an ethics course before a future examination opportunity;
- d. Revoke any license as a professional engineer or certification as an Engineer Intern granted as a consequence of the examinee receiving a passing score on the subject examination; and
- e. Report any disciplinary action taken to other jurisdictions to help ensure the integrity of their examination process.

(c) The Council, after receipt of a complaint in accordance with §2824(c) of this title associated with the practice of engineering in Delaware, shall have the power to review the actions and representations of individuals, corporations or partnerships not authorized by this chapter to engage in the practice of engineering in Delaware. Upon notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of Title 29, the Council may issue a cease and desist order to an individual, corporation or partnership found to be engaged in the unauthorized practice of engineering, notwithstanding that the individual's, corporation's or partnership's license has lapsed, expired or has been suspended or revoked.

(d) Subject to notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of Title 29, the Council may fine any person

who violates a cease and desist order not less than \$100 or more than \$1000. Each day a violation continues may be deemed a separate offense in the Council's discretion.

(e) When disciplinary action requires the successful completion of additional training or education courses, Council shall determine the conditions of the additional training or education courses on a case-by-case basis, including, but not limited to, the type and number of hours of training or education. All training or education courses shall be related to the engineering profession and must be approved by Council.

(f) Any individual, corporation or partnership aggrieved by any disciplinary decision by Council may appeal such decision to the Superior Court. The appeal shall be filed within 30 days of the day the notice of the decision was mailed. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Council for further proceedings on the record. The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the Council and of the purposes of the Delaware Professional Engineers' Act under which Council has acted. The Court's review, in the absence of actual fraud, shall be limited to determination of whether the Council's decision was supported by substantial evidence on the record before it.

(g) When an action is brought in the Court for review of a Council decision, enforcement of such decision may be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.

(h) No appeal for relief of the Court shall be considered as having been taken or made until it has been filed with the Prothonotary and served upon the Council in accordance with the rules of the Court.

§2824. Disciplinary action; procedure.

(a) Whether prompted by receipt of an accusation of wrongdoing by a third party or upon its own initiative, the Council may review the actions and representations of applicants, adjunct and affiliate members, and any person licensed as a professional engineer under this chapter for alleged violations of §2823 of this title or for unlicensed practice pursuant to §2825 of this title.

(b) Complaint Investigation and Prosecution.

(1) Upon receipt of a written accusation alleging a violation of §2823 of this title or alleging the unlicensed practice of professional engineering in violation of §2825 of this title, the Council may assign the matter to its Investigating Committee for possible prosecution. The Investigating Committee may also initiate the prosecution process based upon firsthand knowledge acquired by a member or upon a member's

information and belief whether the accusation of wrongdoing is written or oral. Members of the Investigating Committee shall maintain strict confidentiality of the facts of its investigations and shall not discuss any issues of fact or law relating to an investigation with anyone except other Investigating Committee members, potential witnesses, the target of the investigation, or the target's legal representative.

(a) If any allegations are not supported by the facts stated in the complaint, the Investigating Committee shall submit a written recommendation to the Council for dismissal of the unsupported allegations. The recommendation must recite verbatim all complaint allegations that are recommended for dismissal, indicating the Investigating Committee's reasoning for recommending dismissal of each allegation. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If all allegations in a complaint are dismissed by the Council, the complaint is dismissed.

(b) If the Investigating Committee believes a complaint does state sufficient facts to support one or more allegations, the Investigating Committee shall investigate the allegations and send a copy of the complaint by certified mail with return receipt requested to the last address of record of the accused.

(c) The accused is entitled to submit a written answer to the complaint to the Investigating Committee within 20 calendar days after receiving the complaint.

(d) If, at any time before commencement of a hearing one or more allegations are found to be unsupported, the Investigating Committee shall submit a written recommendation to the Council for dismissal of the unsupported allegations. The recommendation must recite verbatim all complaint allegations that are recommended for dismissal, indicating the Investigating Committee's reasoning for recommending dismissal of each allegation. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendations based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation,

is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If all allegations in a complaint are dismissed by the Council, the complaint is dismissed.

(e) If, during the course of an investigation, the Investigating Committee finds evidence that there may have been violations in addition to those contained in the complaint or those which formed the basis for an internally-initiated investigation, the Investigating Committee may add additional allegations as appropriate.

(f) The Investigating Committee shall issue a final written report at the conclusion of its investigation. The report must list the evidence reviewed and the witnesses interviewed, cite the law alleged to have been violated, and list all facts supporting one or more allegations.

(g) The Investigating Committee shall resolve supported allegations in one of the following ways:

(1) The Investigating Committee may submit a written recommendation to the Council that an Administrative Order be issued. The written recommendation must include a copy of the proposed order. The proposed order must recite all complaint allegations the Investigating Committee believes are supported by its findings, a brief recitation of those findings, and the proposed penalty or penalties. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the order shall be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service. The order must indicate that it will become final unless the accused, within 14 days after receipt of the order, objects to the proposed order and requests a hearing. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service. Administrative Orders are limited to imposing the following penalties, individually or in combination: warning, public reprimand, censure, or requiring completion of training or

education courses. If the accused gives notice to the Investigating Committee that the allegations are contested, the Investigating Committee shall proceed in accordance with paragraph (b)(1)g.3. of this section.

(2) The Investigating Committee is entitled to negotiate a Consent Order with the accused. Consent Orders must be approved by Council before becoming final. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject Consent Orders, after considering the Investigating Committee's written recommendation regarding an order, based only on the information contained in and included with the Consent Order and written recommendation. The Council shall reject Consent Orders only if it decides that 21 a Consent Order is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If the Council approves a Consent Order, the Consent Order must be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service. If the Council does not approve the Consent Order, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval.

(3) The Investigating Committee, with the concurrence of the Department of Justice, is entitled to forward the complaint, along with its final investigative report, to the Council with a written recommendation to prosecute the complaint before a Hearing Committee. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the Council shall convene a Hearing Committee if it has not already done so, and assign the matter to the Hearing Committee for further proceedings. The time and place for the hearing must be fixed by the Hearing Committee within 90 days of receipt of the formal complaint.

(2) At a properly convened Council meeting, the Council President shall nominate at least three Council members to serve on a Hearing Committee. Nominees must be approved by a majority vote of Council members present at a properly convened Council meeting. The Council President shall designate one member of a Hearing Committee to serve as the Hearing Committee Chair. Hearing Committees shall

consist of Council members only. Members of the Investigating Committee may not be members of the Hearing Committee, but Investigating Committee members are entitled to assist in the prosecution of the complaint before a Hearing Committee.

(3) The Hearing Committee shall properly notice and conduct the hearing. The Delaware Rules of Evidence do not apply to the presentation or admissibility of evidence in hearings. A record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the Hearing Committee must be made by majority vote of the Hearing Committee's members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

(a) If the Hearing Committee determines that no violation under §2823 of this title or that no unlicensed practice under §2825 of this title has occurred, it shall issue an order dismissing the complaint.

(b) If the Hearing Committee determines that a violation under §2823 of this title or that an unlicensed practice under §2825 of this title has occurred, it shall issue an order stating its findings of fact, conclusions of law, and penalties.

(c) If the accused fails or refuses to appear, the Hearing Committee may proceed to hear the charges and render a decision by default.

(d) Orders issued by the Hearing Committee are not final until approved by Council. After a quorum has been established at a properly convened Council meeting, by majority vote of the members present who are not recused from the matter, the Council shall approve or reject the hearing committee's written order based only on the information contained in that order. The Council shall overturn the decision of a Hearing Committee only if it decides that a Hearing Committee decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Hearing Committee's order, the matter must be remanded to the Hearing Committee for further proceedings in accordance with the Council's written reasons for withholding its approval. Final orders are appealable to Superior Court within 30 days of the date of mailing. Copies of orders must be served personally or by registered or certified mail to each party.

(c) Disciplinary Penalties and Guidelines.

(1) Disciplinary violations under §2823(a) of this title are punishable by the following penalties, or any combination thereof: levy fines up to \$5,000; require the successful completion of additional training or education courses; issue warnings, public reprimands, and censure; refuse or revoke licensure; impose probation with appropriate terms and conditions; impose suspension of license not to exceed two years; and refuse

to renew any authorization issued to use the term 'engineer' or practice engineering in Delaware. All fines must be paid to Council within 90 days of the date of mailing of an order. All fines collected by the Council must be deposited in the General Fund of the State through the Division of Revenue, provided that the Council may first deduct from the fines an amount equal to the administrative and other direct expenses incurred by the Council, its Hearing Committee, and its Investigating Committee, in the prosecution of the complaint.

(2) The Council shall prepare and publish a chart of Disciplinary Penalty Guidelines ("Guidelines") indicating the minimum and maximum penalties available for each basis for discipline in §2823 of this title. Penalties must be imposed according to the Guidelines after taking into consideration any aggravating or mitigating circumstances in each case. The Guidelines shall be provided to each Association member, associate member, affiliate member, adjunct member, and permittee and shall be available free of charge to the public. Copies of the Guidelines must also be made available to prospective Applicants as a part of their application materials.

(d) Any person who files a complaint, provides information, or testifies as a witness in a matter alleging a violation under §2823 of this title or a violation under §2825 of this title must be afforded the protections of the Delaware Whistleblowers' Protection Act as codified in Chapter 17 of Title 19.

(e) The Council may, upon petition of an adjunct member, affiliate member, individual licensee, permittee, engineering corporation or partnership holding a certificate of authorization, reissue authorization to use the term engineer, a license, permit or certificate of authorization; provided, however, that a majority of the seated members of the Council vote in favor of such issuance.

§2825. Unlicensed practice.

(a) Persons or engineering corporations or partnerships not licensed, not authorized by Council, or not holding a permit or certificate of authorization may not:

(1) Practice engineering as defined in this chapter.

(2) Use any name, title, description of designation, either orally or in writing, that will lead to the belief that such person is entitled to practice engineering as defined in this chapter, including without limitation the words "engineer" or "engineering" or any modification or derivative of those words.

(3) Advertise or hold oneself or conduct oneself in any way or in any such manner as to lead to the belief that such person is entitled to practice engineering.

(c) Whoever practices or offers to practice engineering in this State without being licensed in accordance with the provisions of this chapter shall be in violation thereof.

(d) Whoever presents or attempts to use as that person's own license, certificate of authorization, permit or the seal of a professional engineer not that person's own shall be in violation of the provisions of this chapter.

(e) Whoever gives any false or forged evidence of any kind to the Council or to any member thereof in obtaining authorization to use the term engineer, a license, a certificate of authorization, or a permit shall be in violation of the provisions of this chapter.

(f) Whoever falsely impersonates any other adjunct member, affiliate member, licensee, holder of a certificate of authorization, or permittee with a similar or different name shall be in violation of the provisions of this chapter.

(g) Whoever attempts to use an expired or revoked authorization to use the term engineer, license, certificate of authorization or permit shall be in violation of the provisions of this chapter.

(h) Any applicant who misstates or misrepresents any fact in connection with the application or any such applicant who uses improper means to gain information usable by such applicant on or in connection with an examination taken by the applicant to obtain licensure as a professional engineer or certification as an Engineer Intern shall be in violation of the provisions of this chapter.

(i) Each partner of a partnership and each officer or director of a corporation which practices engineering in violation of this chapter shall also be liable jointly and severally with and to the same extent as such partnership or corporation unless such partner, officer or director who is so liable sustains the burden of proof that the partner, officer, or director did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the violation is alleged to exist.

(j) This chapter shall not be construed to prevent or to affect:

(1) The work of an employee or a subordinate of a licensee or permittee, provided such work is done under the direct responsibility, checking and supervision of a licensee or permittee, or

(2) The practice of professional engineering by an architect legally licensed in this State when such practice is incidental to what may be properly considered an architectural project.

(k) Whether prompted by receipt of a complaint or upon its own initiative, the Council or its Investigating Committee may review allegations of unlicensed practice of engineering.

(l) Complaints of unlicensed practice must be investigated and prosecuted in accordance with the administrative hearing procedures in § 2824(b) of this title, except that Administrative Orders are not available for cases of unlicensed practice.

(m) Unlicensed practice is punishable by a fine up to \$5,000 and a cease and desist order that shall include a reasonable date certain for compliance.

(n) Cease and Desist Orders

(1) The Investigating Committee may submit a written recommendation to the Council that a cease and desist order be issued. The written recommendation must include a copy of the proposed order. The proposed order must recite verbatim all complaint allegations the Investigating Committee believes are supported by its findings, brief recitation of those findings, and include a reasonable date certain deadline for the accused to comply with the order. The order must also indicate that the accused may request a hearing in writing any time before passage of the compliance deadline, and that the order will become final and enforceable after passage of the compliance deadline.

(2) By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the Investigating Committee's recommendation only if it decides that the Investigating Committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the Investigating Committee's recommendation, the matter must be remanded to the Investigating Committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the order must be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service.

(3) Cease and desist orders become final after passage of the compliance deadline only with positive proof of service, such as a signed return receipt or an affidavit of personal service. If the accused requests a hearing in writing to the Investigating Committee, the Investigating Committee shall proceed in accordance with §2824(b)(1) g.3. of this title.

(o) Violations of a cease and desist orders must be investigated and prosecuted in accordance with the procedures in §2824(b) of this title, except that Administrative Orders are not available. Violation of a cease and desist order is punishable by a fine up to \$5,000 for each day a violation occurs.

§2826. Injunctive relief.

Whenever it appears to the Council that any person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this chapter, it may in its discretion bring an action in the Court of Chancery to temporarily restrain or to enjoin the acts or practices and to enforce compliance with this chapter. Any permanent injunction granted by the Court of Chancery pursuant to this section shall include an award for the costs of the action and reasonable attorney's fees to be paid by the defendant, with multiple defendants being jointly and severally liable for such costs and fees. The Court shall not require Council to post a bond.

§2827. Annual reports.

The Association shall submit annually to the Governor and the State Auditor an annual report, certified by a certified public accountant, detailing its income, expenses, assets and liabilities, as well as pertinent statistical and narrative information summarizing its regulatory activities, changes in modus operandi and progress made within its area of responsibility. The Association shall send notice to the General Assembly that such report was submitted to the Governor and the State Auditor.

§2828. Applicability of Freedom of Information Act.

(a) The Association, the Council, and its committees shall each be deemed a "public body" as that term is used in the Freedom of Information Act, Chapter 100, Title 29, and for purposes of this section only, all references to "the Council" shall be understood as referring to the Association and committees as well.

(b) In addition to the records which are not deemed public by reason of §10002(d) of Title 29, the following records shall not be deemed to be public records:

(1) The application of any person to practice engineering in the State, together with all records relating thereto;

(2) Records, reports, correspondence and other documents received by the Council relating to charges against any person that could lead to disciplinary action by the Council; and

(3) All examination materials and related documents.

(c) In addition to the purpose for which a public body may go into executive session pursuant to the Freedom of Information Act, the Council may conduct an executive session for the following purposes:

(1) Consideration of the application of any person for authorization to practice engineering in the State which consideration involves matters of qualification, recommendations, education, experience or testing of the applicant.

(2) Consideration of any charges which could result in disciplinary action by the Council.

(d) For purposes of this section, the term “application” shall mean any application or filing with the Council for the purpose of obtaining authorization to use the term “engineer,” licensure, a certification of authorization, or certification as an engineer intern.

§2829. Seals, Stamps and Signature.

(a) Each licensee shall obtain a seal of the design authorized by the Council, bearing the licensee’s name, license number and the legend “professional engineer.” The seal format may be embossing, rubber stamp or digital. All new licensees must submit proof of their Delaware seal to the Council office no later than 6 months after the licensee’s application approval date, and failure to do so will result in the licensee being placed by the Council in delinquent status.

(b) In addition to the embossing seal required by the foregoing provisions of this section,

(1) Licensees may procure and use a stamp containing the same data as the embossing seal, or

(2) Licensees may use a seal, signature, and date that can be created or transmitted electronically..

§2830. Dating, Signing and Sealing.

(a) All final drawings, specifications and documents involving the practice of engineering as defined in this chapter when issued or filed for public record shall be dated and bear the signature and seal of the licensee(s) who prepared or approved them.

(b) If original tracings are sealed or stamped, the date of sealing or stamping must appear under the signature.

(c) The holder of a temporary permit, using the seal of the State designated by the Council on his permit, shall seal all final drawings, specifications, and documents in

accordance with this section. The permittee shall, in addition, write the permittee's permit number and the permittee's signature immediately adjacent to the imprint of the seal.

§2831. Continuing Professional Competency.

The Council shall prepare and publish guidelines and requirements for the maintenance of professional competency to further Council's charge to safeguard life, health and property, and to promote the public welfare. All active members shall be required to comply with and satisfy all Continuing Professional Competency guidelines and requirements approved by Council.

ADMINISTRATIVE PENALTY GUIDELINES

Administrative Penalty Guidelines

The Council is entitled to impose penalties within the minimum and maximum range, as set forth herein, taking into consideration any aggravating or mitigating circumstances proven by clear and convincing evidence presented to Council prior to the imposition of a final penalty.

(1) **Aggravating circumstances:** circumstances which may justify the maximum penalty shall include but not be limited to the following:

- (a) History of previous violations of this Chapter.
- (b) In the case of negligence; of the magnitude and scope of the project and the damage inflicted upon the general public by the Licensee.
- (c) Evidence of the violation of professional practice acts in other jurisdictions wherein the Licensee has been disciplined by the appropriate regulatory authority.
- (d) Violation of the provisions of this Chapter wherein prior action by Council was previously taken against the Licensee.

(2) **Mitigating circumstances:** circumstances which may justify the minimum penalty shall include but not be limited to the following:

- (a) In the case of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the Licensee's violation.
- (b) Lack of previous disciplinary history in this or any other jurisdiction where in the Licensee practices.
- (c) Restitution of any damages suffered by the Licensee's client.
- (d) The Licensee's professional standing among his peers.
- (e) Steps taken by the Licensee or his firm to ensure the non-reoccurrence of similar violation in the future.

Administrative Penalty Table

| | PROVISION | VIOLATION | MINIMUM | MAXIMUM |
|------|--------------------------|--|--|--|
| (1) | 2823 (a) 1 2825 (h) | Attempting to procure a license, permit, or C/A, by fraud, deceit, false or <u>forged evidence</u> . | Reprimand and probation | Revocation or denial and \$5,000 fine |
| (2) | 2823 (a) 2 | Incompetence | Reprimand, and \$250 fine, and probation | Revocation and \$5,000 fine |
| (3) | 2823 (a) 2 | Misconduct | Warning letter | Revocation and \$5,000 fine |
| (4) | 2823 (a) 2 | Gross Negligence | Reprimand, and \$250 fine, and probation | Revocation and \$5,000 fine |
| (5) | 2823 (a) 3 | Code of Ethics Violation | \$200 fine and completion of ethics course | Revocation and \$5,000 fine and completion of ethics course |
| (6) | 2823 (a) 3 2823 (a) 7 | Improper use of seal or certificate of licensure (Canon 1B) | Warning letter | Reprimand and \$2,000 fine and 2-year probation |
| (7) | 2823 (a) 3 | Signing or sealing work not competent to perform (Canon 2) | Warning letter | Reprimand and \$5,000 fine, followed by 1-year suspension and 1-year probation |
| (8) | 2823 (a) 3 | Knowingly making or <u>filing false report</u> (Canon | Reprimand and probation | Revocation and \$5,000 fine |
| (9) | 2823 (a) 4 | Crime substantially related to practice of engineering | As deemed appropriate by the Board | Revocation or denial and \$5,000 fine |
| (10) | 2823 (a) 5 | Discipline by <u>another jurisdiction</u> | Warning letter | Discipline not exceeding original |
| (11) | 2823 (a) 6 | Failure to report out-of-state discipline | Warning letter | Discipline not exceeding original |
| (12) | 2823 (a) 7 | Aiding or abetting violation of Act | Reprimand and \$500 to \$1,000 fine, and ethics study course | Revocation and \$5,000 fine |
| (13) | 2823 (a) 8 | “Plan stamping” | Reprimand and \$100 fine | Revocation and \$5,000 fine |
| (14) | 2823 (a) 9 | Failure to comply with CPC | In accordance with CPC Guidelines dated 9/11/2013 | |
| (15) | 2830 | Improperly dating, signing and sealing documents | Warning letter | Revocation and \$5,000 fine |
| (16) | 2824 | Violation of Board Order | Meet existing conditions and | Revocation |
| (17) | 2823 | Examinee Violations – See §2823 (b) (1) | See §2823 (b) (1) | Limited by law; Denial of licensure |

GUIDELINES FOR MAINTAINING CONTINUING PROFESSIONAL COMPETENCY (CPC)

Approved by Council of Delaware Association of Professional Engineers, October 11, 2017. Amended July 12, 2023.

Preamble

In order to safeguard life, health and property, and to promote the public welfare, through a high standard of integrity, skills, and practice in the profession of engineering, the following Guidelines for Maintaining Continuing Professional Competence (CPC) are promulgated by the Council of the Delaware Association of Professional Engineers in accordance with the Delaware Professional Engineers' Act, Title 24, Chapter 28 of the Delaware Code. These CPC Guidelines shall be binding on every person holding a certificate of registration as a Professional Engineer in the State of Delaware.

Regular exposure to active technical practice, participation in technical, professional and ethical training, and participation in professional and technical societies assures that professional engineers are exposed to new ideas and keep their skills current. The requirement that all practicing professional engineers must participate in such activities is meant to further safeguard the health, safety and welfare of the public from outdated or ineffective engineering knowledge caused by infrequent practice.

A. Exemptions – with the following exceptions, all persons licensed under the Delaware Professional Engineers' Act must maintain their professional competency in the practice of engineering through one of the methods outlined in this document:

1. New licensees by way of examination shall be exempt for their first renewal period.
2. New licensees by way of comity, shall be responsible for one PDH credit for each month since the Delaware license was issued.

3. A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt from the requirements during that renewal period.
4. Licensees experiencing physical disability, illness, or other extenuating circumstances may apply for an exemption or an extension of time to obtain the credits, subject to the review and approval of the Council. Supporting documentation must be furnished to the Council.
5. Licensees who's license status is "Inactive" on the Council roster shall be exempt from the requirements. In the event that an Inactive licensee elects to return to active practice of professional engineering, PDHs must be earned before returning to active practice for each year exempted, not to exceed the annual requirement for 2 years.
6. Licensees who's license status is "Retired" on the Council roster shall be exempt from the requirements.

B. Reinstatement - a licensee may bring an inactive license to active status by completing all delinquent CPC requirements as outlined in this document. However, this shall not exceed the requirements for the normal two year renewal period.

C. Requirements for Renewal - to renew a license, an applicant must meet the requirements stated herein. The applicant must supply sufficient detail in the recordkeeping medium described below to permit audit verification and detail any backup documentation. The initial period for meeting the requirements described herein will be the first full renewal period following enactment of the associated revision of the law unless one is a first time licensee (see subsection A.1).

D. Definitions - terms used in this section are defined as follows:

1. Professional Development Hour (PDH)—A contact hour (nominal) of instruction or presentation. The PDH is the common denominator for other units of credit.
2. Continuing Education Unit (CEU)—Unit of credit customarily used for continuing education courses. One continuing education unit equals a one (1) credit hour class in an approved continuing education course; which equals 10 PDHs.
3. College/Unit Semester/Quarter Hour—Credit for course in ABET-approved programs or other related college course approved in accordance with subsection E of this section.

4. **Qualified Course/Activity**—any course, seminar or activity with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the professional practice of engineering. Regular duties are not considered qualified activities.

5. **Dual Licensee**—A person who is licensed as both a professional engineer and a professional surveyor.

E. Requirements - every licensee is required to obtain the equivalent of 12 PDHs per year (or 24 PDHs obtained anytime during the renewal period.)

PDHs may be earned as follows:

- a. Successful completion of qualified college courses.
 - b. Successful completion of qualified continuing education courses.
 - c. Successful completion of qualified short courses/tutorials and distance-education courses offered through correspondence, television, DVDs, or the Internet.
 - d. Attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences.
 - e. Presenting, teaching or instructing in a through d above.
 - f. Authoring published papers, articles, books, or accepted licensing examination items.
 - g. Active participation in professional or technical societies.
 - h. Receipt of Patents.
 - i. Active participation in educational outreach activities pertaining to professional licensure or the surveying/engineering professions which involve K–12 or higher education students.
1. Of the 24 PDHs earned during the biennial renewal period: no less than 2 PDH and no more than 6 PDH shall be related to professional ethics, and no more than 9 PDH shall be related to business or project management. The balance shall be related to the licensee's area of technical practice. For dual licensees in both engineering and surveying, up to 12 PDHs may be related to the technical practice of surveying.

2. No PDHs accrued during any biennial renewal period in excess of the 24 needed may be carried forward to satisfy requirements in any subsequent biennial renewal period.

3. Units - the conversion of other units of credit to PDHs is as follows:

a. 1 college or unit semester hour 45 PDHs

b. 1 college or unit quarter hour..... 30 PDHs

c. 1 continuing education unit (CEU)..... 10 PDHs

d. 1 hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences..... 1 PDH

e. For teaching in a through d above, apply multiple of 2. Teaching credit is valid for the first offering or presentation or subsequent substantial revisions made to maintain the relevance and currency of the offering (qualifying subsequent offerings apply a multiple of 1. Full-time faculty may not claim teaching credit associated with regular duties.

f. Publications

- Each published peer-reviewed paper or book in the licensee's area of professional practice10 PDHs

- Each published paper or article in the licensee's area of professional practice 5 PDHs

g. Active participation in a professional or technical society and/or subcommittee thereof – subject to the limitations detailed in section 4 below..... 3 PDHs/year/committee

h. Each patent received..... 10 PDHs

i. 1 hour of outreach activities (as described in 2i above)..... 1 PDH (not to exceed 4 PDHs/year)

j. 1 hour of outreach activities (as described in E.i above) 1 PDH (not to exceed 4 PDHs/year)

4. Determination of Credit - the Council has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.

- a. Credit for college or community college approved courses will be based upon course credit established by the college.
- b. Credit for qualifying seminars and workshops will be based on 1 PDH for each hour of attendance.
- c. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDHs for the actual time of each program.
- d. Credit determination for activities in subsections 3.f and 3.h is the responsibility of the licensee (subject to review as required by the Council).
- e. Credit for activity in subsection 3.g, active participation in professional and technical society or distinct subcommittee with a technical charge is limited to 3 PDHs per year per committee seat, with a maximum of 6 PDH per organization per year. In order to qualify, a licensee must serve as an officer and/or actively participate in a committee of the organization. PDHs are not earned until the end of each year of service is completed.

F. Recordkeeping - the licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to;

- 1. A log showing the type of activity claimed (business, technical or ethics), sponsoring organization, title or topic of course/seminar, location, date and time, and PDHs earned. A log alone is insufficient – it is a summary document only and does not provide proof of attendance or participation.
- 2. Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance. These records must include sponsoring organization, topic or title of course/seminar, location, date and time of event, duration, instructor's or speaker's name, and PDHs earned. Conference/event programs and receipts are not sufficient as proof of attendance.
- 3. Summary description of courses taught & updated, publications and patents, professional and technical society and outreach activities shall be provided in sufficient detail to allow evaluation by the Council for the PDHs claimed.

Licensees shall retain their CPC records for a minimum of three years. DAPE will accept a log and documentation via the NCEES Tracking Tool.

Council, or through appointed Committee, will conduct a random biennial audit which may require up to 5% of the licensees involved to produce evidence of their CPC activities. In addition, such documentation may be required if a complaint is lodged against a licensee. If the records of any audited licensee indicate a deficiency in CPC activities or are not of sufficient quality to support the claimed PDHs, that licensee will be subject to the actions described in paragraph G below and will be subject to more frequent audits than would be expected due to the 5% random audit sample. Licensees that do not renew their licenses on time shall be subject to automatic audit.

Records may be stored in electronic format and held in the sole possession of the licensee such that they may be forwarded to DAPE upon request.

G. Noncompliance – audited licensees that are found not in compliance will be notified of a Proposal to Deny (PTD) License and instructed to contact the DAPE office to schedule a hearing. Actions that may occur as result of that hearing include:

1. First Offenders – penalties may include additional educational requirements, fines and suspension of license.
2. Repeat offenders - penalties may include the above penalties as well as revocation of license.

License will remain in effect and all penalties will be stayed until decision by the hearing committee is rendered and approved by Council.

H. Statement of Compliance – all licensees will be asked to verify compliance with CPC at time of renewal.

1. Falsely claiming compliance is an ethical violation in the absence of a good-faith effort to adhere to CPC, and such a violation will be considered by the hearing committee during the assessment of penalties.
2. Licensees with deficiencies are encouraged to respond ethically and request Inactive or Retired status or state why they should be exempt as described in paragraph A above.
3. The preferred path to renewal for licensees that do not meet the requirements and are not exempt is to go to Inactive status and apply for reinstatement once the requirements are met. During the time that the license is Inactive, the licensee shall not practice engineering for projects located in the State of Delaware.

I. Comity/Out-of-Jurisdiction Resident - Licensees who are residents of jurisdictions other than Delaware shall meet the CPC requirements of their resident jurisdiction. If the licensee resides in a jurisdiction that has no continuing professional competency (CPC) requirement, or the licensee is exempt from the CPC requirement in the licensee's resident jurisdiction, the licensee must meet the requirements of Delaware.

DELAWARE CODE OF ETHICS

This section is the Code of Ethics for all Delaware Licensed Professional Engineers practicing within the State of Delaware.

This code was approved by the Council of Delaware Association of Professional Engineers, July 9, 2008 (Amended August 10, 2022)

Preamble

In order to safeguard life, health and property, and to promote the public welfare, through a high standard of integrity, skills, and practice in the profession of engineering, the following Code of Ethics is promulgated by the Council of the Delaware Association of Professional Engineers in accordance with the Delaware Professional Engineers' Act, Title 24, Chapter 28 of the Delaware Code. The Code of Ethics shall be binding on all applicants and every person holding a certificate of registration as a Professional Engineer and all partnerships or corporations or other legal entities authorized to perform engineering services in the State of Delaware.

The revocation or suspension of a Professional Engineer's license by another jurisdiction, if for a cause which in the State of Delaware would constitute a violation of this Code of Ethics, shall be grounds for a charge of violation of this Code of Ethics.

Persons licensed under the Delaware Professional Engineers' Act must subscribe to the Code of Ethics as part of that person's application and shall be deemed to be familiar with its several provisions and to understand them.

This Code of Ethics follows the practice of Title 1, Section 304(b) of the Delaware Code, in that "Words importing the masculine gender include the feminine as well."

1. THE ENGINEER SHALL HOLD PARAMOUNT SAFEGUARDING LIFE, HEALTH AND PROPERTY AND PROMOTING THE PUBLIC WELFARE IN THE PERFORMANCE OF HIS PROFESSIONAL DUTIES.

A. The engineer shall at all times recognize that his paramount duty is to safeguard life, health and property and to promote the public welfare. If his professional judgment is overruled under circumstances such that upon investigation he believes that the life, health and property or public welfare is endangered, he shall so

inform his employer and the Council of the Delaware Association of Professional Engineers.

B. The engineer shall approve and seal only those design documents which in his considered opinion do not endanger the life, health, property and the public welfare in conformity with accepted engineering standards.

C. The Engineer should be committed to improving the environment by adherence to the principles of sustainable development so as to enhance the quality of life of the general public. Sustainable development is the challenge of meeting human needs for natural resources, industrial products, energy, food, transportation, shelter, and effective waste management while conserving and protecting environmental quality and the natural resource base essential for future development.

D. The engineer shall not permit the use of his own, firm's, or associates' name in business ventures with any person or firm which upon investigation he believes is engaging in fraudulent or dishonest business or professional practices.

E. The engineer having knowledge of any alleged violation of the Code of Ethics shall be forthright and candid in cooperating with the Council in furnishing such information or assistance as may be required.

2. THE ENGINEER SHALL PERFORM SERVICES ONLY IN AREAS OF HIS COMPETENCE.

A. The engineer shall undertake to perform engineering only when qualified by education or experience in the areas of professional engineering involved.

B. The engineer may accept an assignment requiring education or experience outside his areas of competence, provided that such areas will be performed by a Professional Engineer or otherwise qualified associates, consultants, or employees. He may then sign and seal the documents for the total project. The engineer shall not affix his seal to any such document not prepared under his supervisory control and review.

3. THE ENGINEER SHALL ISSUE PROFESSIONAL STATEMENTS ONLY IN AN OBJECTIVE AND TRUTHFUL MANNER.

A. The engineer shall be completely objective and truthful in all professional reports, statements, or testimony, and shall include all relevant and pertinent information.

B. The engineer shall publicly express a professional opinion on technical subjects only when it is founded on adequate knowledge of the facts and competence in the subject matter.

C. The engineer when acting as a representative of an individual or organization shall issue no statements, criticisms, or arguments on engineering matters unless he has prefaced those comments by explicitly identifying on whose behalf he is speaking. When the engineer is acting as a consultant his expression or professional opinion shall be prefaced by identifying his status as a consultant, without necessarily naming the client. The engineer shall reveal any personal interest he may have in the matter.

4. THE ENGINEER SHALL ACT IN PROFESSIONAL MATTERS FOR EACH EMPLOYER OR CLIENT AS FAITHFUL AGENT OR TRUSTEE, AVOIDING CONFLICTS OF INTEREST.

A. The engineer shall disclose all known or potential conflicts of interest to his employer and/or client by promptly informing them of any business association, interest, or other circumstances which could influence his judgment or the quality of services.

B. The engineer shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

C. The engineer shall not solicit or accept financial or other valuable consideration, directly or indirectly, from suppliers, contractors, their agents, or other parties in connection with his work for employers or clients.

D. The engineer in public service as a member, advisor or employee of a governmental body shall not participate in decisions on work which involves professional services solicited or provided by him or his organization.

E. The engineer shall not solicit or accept a professional contract from a governmental body on which a principal or officer of his organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority.

F. The engineer shall not reveal proprietary information obtained in a professional capacity without the prior consent of the client or employer, except as authorized or required by law.

5. THE ENGINEER SHALL AVOID IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT.

A. The engineer shall not offer, give, solicit, or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure work.

B. The engineer shall not falsify or permit misrepresentation of his own, or associates' academic or professional qualifications. He shall not misrepresent his degree of responsibility in prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.

C. The engineer shall not submit any proposal for purposes of obtaining professional work in which he falsifies or misrepresents his capability of carrying out that proposal.

6. THE ENGINEER SHALL SUPPORT AND FAITHFULLY COMPLY WITH THE LAWS OF ANY JURISDICTION WITHIN WHICH HE PRACTICES.

A. The crimes listed herein have been determined by Council to be substantially related to the practice of engineering, and, as such, the engineer shall report to Council within ninety (90) days of any conviction of any crime specified in the following sections of the Delaware Criminal Code:

Subchapter I. Inchoate Crimes

§502 Criminal solicitation in the second degree
 §503 Criminal solicitation in the first degree
 §511 Conspiracy in the third degree
 §512 Conspiracy in the second degree

§513 Conspiracy in the first degree

Subchapter II. Offenses Against the Person

§603 Reckless endangering in the second degree
 §604 Reckless endangering in the first degree

Subchapter III. Offenses Involving Property

§845 Theft of services
 §854 Identity theft
 §861 Forgery
 §862 Possession of forgery devices
 §871 Falsifying business records
 §873 Tampering with public records in the second degree
 §876 Tampering with public records in the first degree
 §877 Offering a false instrument for filing
 §878 Issuing a false certificate
 §881 Bribery
 §882 Bribe receiving
 §906 Deceptive business practices
 §907 Criminal impersonation
 §909 Securing execution of documents by deception
 §913 Insurance fraud
 §933 Theft of computer services
 §934 Interruption of computer services
 §935 Misuse of computer system information
 §936 Destruction of computer equipment

§937 Unrequested or unauthorized elec. mail or use of network or software to cause same

Subchapter IV. Offenses Against Public Administration

§1201 Bribery
 §1203 Receiving a bribe
 §1205 Giving unlawful gratuities
 §1206 Receiving unlawful gratuities
 §1207 Improper influence.
 §1211 Official misconduct
 §1212 Profiteering
 §1221 Perjury in the third degree
 §1222 Perjury in second degree
 §1223 Perjury in first degree
 §1240 Terroristic threatening of public officials or public servants
 §1261 Bribing a witness
 §1262 Bribe receiving by a witness
 §1263 Tampering with a witness
 §1264 Bribing a juror
 §1266 Tampering with a juror
 §1269 Tampering with physical evidence

B. The engineer shall report to Council within ninety (90) days any conviction in any other state, municipal, or federal jurisdiction, for a crime similar to those listed in Canon 6.A.

C. The engineer, upon conviction for any felony crime not specifically listed in Canon 6.A, shall provide within ninety (90) days of conviction, information to

the Council in sufficient specificity to enable Council to make a determination of whether the crime constitutes conduct reasonably likely to deceive, defraud, or harm the public.

CODE OF ETHICS: GENERAL, PROFESSIONAL ENGINEERING

This section is the General Code of Ethics for all Licensed Professional Engineers practicing within the United States.

Preamble

Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.

I. Fundamental Canons

Engineers, in the fulfillment of their professional duties, shall:

- 1) Hold paramount the safety, health, and welfare of the public.
- 2) Perform services only in areas of their competence.
- 3) Issue public statements only in an objective and truthful manner.
- 4) Act for each employer or client as faithful agents or trustees.
- 5) Avoid deceptive acts.
- 6) Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

II. Rules of Practice

1. Engineers shall hold paramount the safety, health, and welfare of the public.
 - 1) 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.
 - 2) Engineers shall approve only those engineering documents that are in conformity with applicable standards.

- 3) 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.
 - 4) Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.
 - 5) Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
 - 6) 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.
2. Engineers shall perform services only in the areas of their competence.
- 1) Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.
 - 2) 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.
 - 3) Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.
3. Engineers shall issue public statements only in an objective and truthful manner.
- 1) 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.
 - 2) Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.
 - 3) Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

4. Engineers shall act for each employer or client as faithful agents or trustees.
 - 1) Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
 - 2) Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.
 - 3) Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
 - 4) Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
 - 5) Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.
5. Engineers shall avoid deceptive acts.
 - 1) 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.
 - 2) Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

III. Professional Obligations

1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
 - 1) Engineers shall acknowledge their errors and shall not distort or alter the facts.
 - 2) Engineers shall advise their clients or employers when they believe a project will not be successful.
 - 3) Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
 - 4) Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
 - 5) Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
2. Engineers shall at all times strive to serve the public interest.
 - 1) Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.
 - 2) Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.
 - 3) Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.
 - 4) Engineers are encouraged to adhere to the principles of sustainable development¹ in order to protect the environment for future generations.
3. Engineers shall avoid all conduct or practice that deceives the public.
 - 1) Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.
 - 2) Consistent with the foregoing, engineers may advertise for recruitment of personnel.
 - 3) Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

4. 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.

1) Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.

2) Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.

5. Engineers shall not be influenced in their professional duties by conflicting interests.

1) Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.

2) Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.

6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.

1) Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.

2) Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.

3) Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.

7. 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.

- 1) Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.
 - 2) Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.
 - 3) Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.
8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.
- 1) Engineers shall conform with state registration laws in the practice of engineering.
 - 2) Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.
9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.
- 1) Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
 - 2) Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.
 - 3) Engineers, before undertaking work for others in connection with which the engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.
 - 4) Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.
 - 5) Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses,

reading in the technical literature, and attending professional meetings and seminars.

ENGINEERING ETHICS CASE REVIEWS

Case 1: Incomplete Plans and Specifications – Engineer, Government, and Contractor Responsibilities

Facts:

Engineer A responds to an RFP from a small local public agency to build a new dam to be financed in part by a federal grant. Engineer A's firm's impressive brochure and personal interview results in the award of a contract for the design, drawings, and specifications.

The signed and sealed drawings and specifications are ultimately approved by Engineer B of the engineering staff of the federal agency funding the project, and the project is thereafter duly advertised for bids and a contract is awarded to the low bidder, Hi-Lo Construction. The local public agency does not have the in-house technical resources to review the drawings and specifications.

At the pre-construction conference, it is pointed out by Engineer C, owner of Hi-Lo Construction, that much of the design detail is lacking in the drawings and specifications and that Hi-Lo Construction declares that certain parts of the project are "unbuildable" without major changes. Engineer A generally agrees with Hi-Lo's characterization, but in his defense responds that he felt pressured to deliver the drawings and specifications on a specified date, but did not inform anyone as to their incompleteness. While much of the information was missing from the drawings and specifications, Engineer A was confident that sufficient federal funds (and not local funding) would cover any potential increased costs.

References:

Section I.1. - Code of Ethics: Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health and welfare of the public.

Section II.3.a. - 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. - Code of Ethics: Engineers shall avoid deceptive acts.

Section III.1.b. - Code of Ethics: Engineers shall advise their clients or employers when they believe a project will not be successful.

Section III.2.b. - Code of Ethics: Engineers shall not complete, sign or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.

Discussion:

The Board has considered cases involving similar situations in the past. In BER Case No. 82-5, where an engineer employed by a large defense industry firm documented and reported to his employer excessive costs and time delays by sub-contractors, the Board ruled that the engineer did not have an ethical obligation to continue his efforts to secure a change in the policy after his employer rejected his reports or to report his concerns to proper authority, but has an ethical right to do so as a matter of personal conscience. The Board noted that the case did not involve a danger to the public health or safety, but related to a claim of unsatisfactory plans and the unjustified expenditure of public funds. The Board indicated that it could dismiss the case on the narrow ground that the NSPE Code does not apply to a claim not involving public health and safety, but that was too narrow a reading of the ethical duties of engineers engaged in such activities. The Board also stated that if an engineer feels strongly that an employer's course of conduct is improper when related to public concerns, and if the engineer feels compelled to blow the whistle to expose facts as he sees them, he may well have to pay the price of loss of employment. In this type of situation, the Board felt that the ethical duty or right of the engineer becomes a matter of personal conscience, but the Board was unwilling to make a blanket statement that there is an ethical duty in these kinds of situations for the engineer to continue the campaign within the company and make the issue one for public discussion.

As in Case No. 82-5, the issue does not allege a danger to public health or safety, but is premised upon a claim of unsatisfactory plans and the unjustified expenditure of public funds. In Case No. 82-5, the Board found that, while the Code did not require disclosure, the engineer did have an ethical right to pursue the matter further, even to the point of public disclosure. Unlike Case No. 82-5, this case does not involve a conflict with the ethical requirement of confidentiality, but concerns the affirmative responsibility of engineers to complete plans in conformity with applicable engineering standards and avoid deceptive acts.

While the Board certainly hopes that the facts involved in this case are very unique and do not represent more than a small fraction of public design and construction projects in the United States, it appears that the facts as presented in this case are, unfortunately, not as unique as one might hope.

It is clear that Engineer A had an obligation to provide a complete set of design drawings and specifications on the project in which Engineer A was engaged. Unlike what is required on some projects (e.g., design/build or construction contracts with specific design delegation clauses or provisions) where the engineer is expected to only design a certain percentage of the project prior to the selection of the contractor, here, Engineer A was fully required to provide the complete design on the project. Engineer A's bold assertion that the work was incomplete, but that this was due to time pressures and his expectation that Federal funds would be awarded to complete the work is wholly unconvincing. Engineer A was selected for his expertise, which presumably included Engineer A's ability to fully perform the work based on project time parameters.

Engineer A's comment about Federal funds borders on fraud and misrepresentation and is a clear violation of the NSPE Code.

Engineer B's approval of Engineer A's incomplete plans is troubling, although we do not know all of the facts and circumstances relating to the decision to approve. Engineers have an obligation to perform services within their area of competence. If Engineer B was not able to perform the necessary reviews of Engineer A's work, Engineer B should have provided this information to a supervisor who would have assigned an appropriate engineer to perform the review. Not possessing adequate competency to perform a task is not in and of itself a violation of the NSPE Code, but the failure to recognize the lack of competency and take appropriate action to address the situation is a violation of the NSPE Code.

Finally, the Board believes that Engineer C's actions in bidding on an "unbuildable" contract is also very troubling. Presumably, Engineer C had an opportunity to review the bidding documents which included appropriate engineering drawings, plans, and specifications. From such a review, Engineer C should have had a sense of what would be necessary to complete the project. If the engineering documents were incomplete or inadequate, then Engineer C's bid should have reflected that fact and contained appropriate bid items for additional services required to complete the work for the benefit of the owner. In addition, Engineer C could have requested further clarification from the owner or Engineer A in order to better understand the engineering drawings.

As an engineer and a contractor presumably, Engineer C had the necessary background and experience to carefully evaluate the engineering drawings as well as other aspects of the work in order to make an informed decision as to whether to bid on the project. Engineer C had no one to fault but himself for the problems Engineer C encountered in attempting to build the project. Engineer C submitted the low bid on the project, presumably knowing inadequacies of the documents as well as the obvious risks involved.

Case 2: Incomplete Plans and Specifications

Use of P.E. Designation Not Licensed In State in Which Complaint Is Filed

Facts:

Engineer A is a safety engineer for a federal agency. He is responsible for independently overseeing the proper implementation of worker and nuclear safety programs in the agency's facilities, which are located in many different states, including the state in which Engineer A is licensed, State Y. Engineer A is not required to be licensed by the federal agency, but has become licensed because of his personal commitment to the engineering profession.

Engineer A has never used his seal in the course of his employment. When Engineer A moves to State Z, he does not obtain an engineering license in State Z. Engineer A reads a newspaper account about LMN Engineering, a subcontractor to the federal agency in which he works, having a conflict of interest with the agency. Engineer A, acting on his ethical obligation to report violations of the NSPE Code of Ethics to a public authority, files a complaint against LMN Engineering. In the text of the complaint, Engineer A indicates that he is licensed in State Y but not licensed in State Z and signs the letter "Engineer A, P.E."

Engineer A is thereafter notified by the State Z engineering licensure board that his use of the title "P.E." in the letter is inappropriate because he is not licensed in State Z.

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 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 II.3.b. - Code of Ethics: Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.

Section III.3.a. -Code of Ethics: Engineers shall avoid the use of statements containing a material mis-representation of fact or omitting a material fact.

Discussion:

The use of appropriate engineering titles has long been an important issue within the engineering profession. Misuse of engineering titles has the effect of misleading and deceiving the general public, as well as diminishing the image and stature of qualified engineering professionals. In recent years, efforts have been undertaken to educate individuals and companies about the inappropriate use of engineering titles or references by many engineering organizations and state engineering licensure boards. State engineering licensure boards have also increasingly taken a stricter position on the use of the reference, "P.E.," by licensed engineers not licensed in the state in which the reference is being used. In fact, some states have developed guidelines on appropriate use of the "P.E." reference.

The NSPE Board of Ethical Review has had recent occasion to consider the use of appropriate engineering titles. For example, the Board has had three occasions to consider cases involving alleged misrepresentation of credentials or status. BER Case No. 90-4 involved the question of whether it was ethical for Engineer Z, a principal in an engineering firm, to continue to represent Engineer X as an employee of his Firm. Engineer X had been employed by Firm Y, a medium-sized engineering consulting firm controlled by Engineer Z. Engineer X was one of a few engineers in Firm Y with expertise in hydrology, but the firm's work in the field of hydrology did not constitute a significant percentage of its work. Engineer X, an associate with the firm, gave two weeks notice of her intent to move to another firm. Thereafter, Engineer Z continued to distribute a brochure identifying Engineer X as an employee of Firm Y and list Engineer X on the firm's resume.

In concluding that Engineer Z's actions were not unethical, the Board noted that under the facts of the case, there was no suggestion that any of the brochures or other

promotional material describe Engineer X as a “key employee” in the firm. Nor was there any effort or attempt on the part of Firm Y to highlight the activities or achievements of Engineer X in the field of hydrology. While the facts reveal that Engineer X was one of the few engineers in the firm with expertise in the field of hydrology, Engineer X was not the only engineer in the firm who possessed such expertise. In addition, it appeared that this area of practice did not constitute a significant portion of the services provided by Firm Y. Therefore, the Board concluded that the inclusion of Engineer X’s name in the firm’s brochure and resume did not constitute a misrepresentation of “pertinent facts.”

Importantly, however, in BER Case No. 90-4, the Board went on to note that “We must make clear that we are not condoning the failure of an engineering firm to correct material (brochures, resumes, etc.) which might have the unintentional effect of misleading clients, potential clients, and others. While we recognize the realities of firm practice and the logistical problems involved in marketing and promotion, we do believe it is important for firms to take actions to expeditiously correct any false impressions which might exist.” The Board continued by noting that “we believe engineering firms that use printed material as part of their marketing efforts should take reasonable steps

to assure that such written matter is as accurate and up-to-date as possible. In the case of marketing brochures and other similar materials, errata sheets, cover letters, strike-outs and, if necessary, reprints should be employed within a reasonable period of time to correct inaccuracies, particularly where a firm has reason to believe that a misunderstanding might occur. Firms that fail to take such measures run the risk of breaching ethical behavior.”

Later, in BER Case No. 91-9, the Board considered a case involving Engineer A, who misrepresented his educational credentials. In carefully considering earlier BER opinions, the Board again noted that the issue of falsification or misrepresentation of academic or professional qualifications is a core ethical issue because it goes to the heart of engineering ethics—the protection of the public health and safety through the establishment of rules of conduct that help to assure that the public receives the highest quality engineering services possible.

The Board has noted its deep concern over situations and circumstances in which an individual expressly or implicitly falsifies or misrepresents academic or professional qualifications to employers, clients, or members of the public.

More recently, in BER Case No. 97-8, Engineer A was licensed as a professional engineer in State B, the state in which Engineer A resided. Engineer A was about to retire from his full-time employment with ENG Co. As part of this transition and because

Engineer A would no longer be engaged in the practice of engineering under his state's law, Engineer A planned to discontinue his professional engineering license, which was paid for by his former employer. Engineer A planned to continue serving on several local governmental boards. Because of his association with and the pride he had for engineering, Engineer A wanted to continue to use the P.E. designation after his name on his board business card and on the board's letterhead. Engineer A took pride in his longstanding status as a professional engineer and believed he would be giving professional engineering added recognition by including the reference on the letterhead, which included other individuals such as attorneys and architects. State B did not have a provision in its law addressing the issue of "inactive status." In reviewing this issue, the Board noted that at first blush, the facts appeared to present a set of circumstances that would dictate an obvious result. It would appear on its face that an individual who has a close affinity with the engineering profession during his or her lifetime should be permitted to continue to use the P.E. designation after retirement. Once earned, it would seem unjust to deny one the right to call oneself a professional engineer (P.E.), particularly where the individual is seeking to enhance the recognition of professional engineers and professional engineering.

However, upon further examination, the Board deemed the issue to be more complex than first thought and raised the question of misrepresentation of credentials or status. The facts in BER Case No. 97-8 were quite different in degree than those involved in the earlier cases reviewed, and the Board noted that the facts did involve a degree, albeit slight, of misrepresentation. While it was true that Engineer A had demonstrated the necessary qualifications to be licensed as a professional engineer, Engineer A made a conscious and intentional decision to cease maintaining his status as a professional engineer in his state. While the Board recognized and appreciated Engineer A's desire to enhance the status and image of all professional engineers by indicating his professional status, they believed it was important that this status be represented in a manner that is above reproach, particularly because of the very public nature of Engineer A's position on several local governmental boards. The Board concluded that at a minimum, Engineer A should have indicated his inactive or retired status next to the P.E. designation. To do otherwise would create a misleading impression that Engineer A was currently licensed under state law in the jurisdiction in which he resided, and this could potentially cause embarrassment to all professional engineers. There was nothing demeaning or derogatory for an engineer to provide this straightforward and simple clarification in his status. To do so would clearly be consistent with the letter and the spirit of the law and avoid any possible questions or doubts about any actions, however unintentional, to mislead or deceive anyone concerning Engineer A's current status as an engineer. The Board concluded that it

would be ethical for Engineer A to continue to use the P.E. designation after his name, as long as Engineer A indicated his inactive or retired status next to the P.E. designation, and as long as this was done in compliance with the state engineering licensing laws and regulations.

Turning to the facts in the instant case, the Board believes that the conclusion reached in BER Case No. 97-8 is partly applicable to the discussion in the present case. As noted earlier, the Board recognizes that state engineering licensure boards are becoming increasingly strict on the use of engineering titles and references. However, in view of Engineer A's clarification in the body of his letter to the engineering licensure board concerning his licensure status in states Y and Z, and the fact that the complaint letter was sent to a limited group of individuals, the Board believes that Engineer A was not attempting to mislead or deceive the board or any other group or individual concerning his licensure status. Instead, the Board believes Engineer A's actions were probably an oversight, or at worst, a misunderstanding of the law or requirements of State Z.

Therefore, the Board cannot conclude that Engineer A's actions, although criticized by a state engineering licensure board, amount to a violation of the NSPE Code. At the same time, the Board must caution all engineering licensees on the need to be familiar with the technical requirements contained in applicable state engineering licensure statutes and regulations to avoid unintended violations of the law.

The NSPE Code of Ethics is a national code of ethics and this Board believes the NSPE Code obligates NSPE members to report ethical violations to the appropriate authorities in whatever jurisdiction the NSPE member observes the violation. This obligation is separate and apart from the obligation a professional engineer may have under state law.

As to the second question, Engineer A's actions are fully consistent with the professional and ethical obligation to hold paramount the health, safety and welfare of the public. While this obligation is codified in state laws, its application cannot be restricted within state boundaries. The NSPE Code of Ethics is a national code of ethics and this Board believes the NSPE Code obligates NSPE members to report ethical violations to the appropriate authorities in whatever jurisdiction the NSPE member observes the violation. This obligation is separate and apart from the obligation a Professional Engineer may have under state law.

Case 3: Responsible Charge Working Part-Time For Firm

FACTS:

Engineer A is a licensed professional engineer and land surveyor in state A. Engineer A is associated with a firm, XYZ Engineering and Surveying (which offers professional engineering and surveying), as the licensed professional engineer in charge under the state's certificate of authorization requirement. The firm has not performed any work outside of state A. Engineer A's understanding of the law of state A is that a licensed professional engineer is to be in "responsible charge" of engineering and a person licensed as a professional land surveyor is to be in "responsible charge" of land surveying. These persons in responsible charge can be a principal of the firm or an employee of the firm under the state's laws.

The agreement Engineer A has with XYZ Engineering and Surveying is that XYZ grants Engineer A 10% share of the stock in the firm and as compensation for his engineering services, Engineer A will receive 5% of the gross billings for engineering work for which the seal of a licensed engineer in responsible charge of engineering is required. This agreement is contingent on the understanding that if any one of the three principals of XYZ Engineering and Surveying becomes licensed as a professional engineer in state A, the agreement will become void and the 10% stock will be returned to XYZ Engineering and Surveying.

In addition to working with XYZ Engineering and Surveying, Engineer A has a full-time engineering position for a state governmental agency. This work requires no engineering license. Engineer A works thirty-five hours per week on a flex-time basis and provides about twenty hours per week supervising engineering services at the firm, plus an additional twelve hours of work on the weekends. Engineer A does not normally go into the field for XYZ Engineering and Surveying but is available for consultation, twenty-four hours a day.

Both the state governmental agency and the engineering firm are aware of Engineer A's activities as a dual employee and do not object to these activities.

REFERENCES:

II.2.b. - 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.

II.2.c. - Code of Ethics: Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.

II.4.d. - Code of Ethics: Engineers in public service as members, advisors or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.

II.4.e. - Code of Ethics: Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

II.5.a. - 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.

III.1.c. - Code of Ethics: Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.

III.6.a. - Code of Ethics: Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.

III.6.b. - Code of Ethics: Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.

DISCUSSION:

The circumstances faced by Engineer A in this case are not unlike circumstances occasionally faced by other engineers who seek to explore career opportunities beyond

a full-time position. A key question involved in such activities is whether the engineer can devote sufficient attention to the responsibilities involved in an ethical manner.

Engineers are frequently required to provide oversight and review of the work of others under their supervision and sign and seal the drawings. As noted in NSPE Code Section II.2.b. it states that engineers are not permitted to affix their signatures to any plans and documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control. This principle is one of the most basic and fundamental ethical principles to which professional engineers are required to adhere because it goes to the heart of the public trust upon which their professional status is based.

The BER has in the past had occasion to consider cases similar to this case. In BER Case No. 91-8, an Engineer's firm was retained by a major fuel company to perform site investigations in connection with certain requirements under state and federal environmental regulations. Under the procedures established by the Engineer's firm, the site visits would be conducted by engineering technicians under direct supervision of Engineer A who would perform all observations, sampling, and preliminary report preparation. Engineering technicians would also take photographs of the sites. No professional engineers were present during the site visits. Following site visits, all pertinent information and material was presented to Engineer A who was competent in this field. Following a careful review, Engineer A would certify that the evaluations were conducted in accordance with engineering principles.

In considering whether it was ethical for Engineer A to certify that the evaluations were conducted in accordance with engineering principles, the Board noted that the NSPE Code of Ethics is very clear concerning the requirements of engineers not to affix their signatures to any plans or documents dealing with subject matter in which the engineers lack competence, nor to any plan or document not prepared under their direction and control (See NSPE Code Section II.2.b.). The BER concluded that it was ethical for the engineer to certify that the evaluations were conducted in accordance with engineering principles so long as the engineer exercising direction and control performs a careful and detailed review of the material submitted by the engineer's staff and there has been full compliance with NSPE Code Section II.2.c.

Also, in BER Case No. 86-2, an engineer was the chief engineer within a large engineering firm, and affixed his seal to some of the plans prepared by licensed engineers working under his general direction who did not affix their seals to the plans. At times, the engineer also sealed plans prepared by unlicensed graduate engineers working under his general supervision. Because of the size of the organization and the

large number of projects being designed at any one time, the engineer found it impossible to give a detailed review or check of the design. He believed he was ethically and legally correct in not doing so because of his confidence in the ability of those he had hired and who were working under his general direction and supervision. By general direction and supervision, the engineer meant that he was involved in helping to establish the concept, the design requirements, and review elements of the design or project status as the design progressed. The engineer was consulted about technical questions and he provided answers and direction in these matters. In evaluation of the facts and circumstances in this case, the Board focused on the language in the NSPE Code Section II.2.b. relating to the obligation of engineers not to affix their signature to documents or plans ... not prepared under their "direction and control." Following a careful review of the plain meaning of the terms "direction" and "control," the Board concluded that the terms have meaning which, when combined, would suggest that an engineer would be required to perform all tasks related to the preparation of the drawings, plans, and specifications in order for the engineer ethically to affix his seal. The Board also noted at the time that the NCEES Model Law would require that an engineer must be in "responsible charge" -- meaning "direct control and personal supervision of engineering work" -- in order to affix his seal. After careful evaluation, the Board concluded that it would not be ethical for the engineer to seal plans that have not been prepared by him or which he has not checked and reviewed in detail.

In BER Case No. 90-6, the Board considered two separate fact situations involving the signing and sealing by an engineer of documents prepared using a CADD system. In considering the facts, the Board noted that the rendering of the Board's decision in BER Case No. 86-2 raised a considerable degree of discussion within the engineering community because to many it appeared to be inconsistent with customary and general prevailing practices within the engineering profession and would therefore place a significant number of practitioners in conflict with the provisions of the Code. The Board noted at the time that the Code of Ethics is not a static document and must reflect and be in consonance with general prevailing practices within the engineering profession. Said the Board, "the Code must not impose an impossible or idealistic standard upon engineers, but rather must establish a benchmark of reasonable and rational methods of practice for it to maintain its credibility and adherence." The Board determined that the conclusion in BER Case No. 86-2 should be modified to reflect actual practices which exist within engineering and not impose an impossible standard upon practice. Said the Board, "Were the Board to decide BER Case No. 86-2 today, the Board would conclude that it was not unethical for the engineer in that instance to seal plans that were not personally prepared by him as long as those plans were checked and reviewed by the engineer in some detail. The Board does not believe this represents a reversal of

the Board's decision in BER Case No. 86-2, but rather a clarification, particularly for those who were troubled by the Board's discussion and conclusion in that case."

Once again, we follow the reasoning in BER Case No. 90-6 and its clarification of BER Case No. 86-2. Under the facts in the instant case, we believe it was appropriate for Engineer A to sign and seal the drawings under the facts and circumstance involved in this case. Engineer A is providing approximately thirty-two hours each week of engineering services to the firm and is on call twenty-four hours a day to provide engineering field services for the benefit of the firm and its clients. His responsibilities appear to be consistent with the state's certificate of authorization requirements, are limited to professional engineering services and do not involve land surveying services. As noted under the facts, Engineer A has a flexible schedule with his other employer and presumably is able to adjust his schedule to meet the needs of his employers. While it appears that Engineer A may be stretching his role as an engineer in responsible charge for the firm, without more evidence to suggest improper activity, we are hesitant to conclude that Engineer A was violating the NSPE Code of Ethics.

The manner in which Engineer A is compensated does not appear to contain any specific provision which would necessarily run afoul of the NSPE Code of Ethics. Under NSPE Code Section III.6.a., engineers are not permitted to request, propose or accept a commission on a contingency basis under circumstances in which their judgment may be compromised. Although it could be argued that Engineer A's receiving 5% of the gross billings for engineering work for which the seal of a licensed engineer is required could potentially compromise Engineer A's judgment, we believe that would stretch this provision of the NSPE Code of Ethics beyond its actual intent. Otherwise, virtually any compensation scheme that was not based upon the number of hours worked could be held to be in violation of the NSPE Code of Ethics and that would be an impractical conclusion.

In addition, the Board views the transfer provision ("The agreement is contingent on the understanding that if any one of the three principals of XYZ Engineering and Surveying becomes licensed as a professional engineer in state A, the agreement will become void and the 10% stock will be returned to XYZ Engineering and Surveying") is not of a nature that would compromise Engineer A's judgment. Instead, the Board views this provision as a means of the firm's principals' maintaining control over the management of the firm.

With regard to Engineer A's dual role as an governmental employee and a private employee, as noted under the facts, both the state governmental agency and the engineering firm are aware of Engineer A's activities as a dual employee and do not

object to these activities. However, the Board must note that should a conflict-of-interest arise (e.g., where Engineer A or the firm's activities conflict with the governmental employer's activities or interests) Engineer A will need to carefully address those activities consistent with NSPE Code Sections III.6.b., II.4.d., II.4.e. and other applicable provisions of the NSPE Code.

As has been noted in cases similar to this one, while the actions of Engineer A may be consistent with the NSPE Code of Ethics, it is critical for an engineer under these circumstances to understand the need to perform a careful review of all pertinent material before signing and sealing appropriate plans and drawings. We are of the view that so long as the professional engineer exercising direction and control performs a careful and detailed review of the material submitted by the engineer's staff, there has been compliance with NSPE Code Section II.2.c. In addition, Engineer A must carefully review and understand all state requirements regarding "responsible charge" activities including possible local office and employment restrictions.

REFERENCES

Delaware Association of Professional Engineers (DAPE), Homepage, Reference Documents

<https://www.dape.org/>

Delaware Administrative Code: Title 24. Professions And Occupations Ch.28 Professional Engineers, (§2801 to §2831)

<http://delcode.delaware.gov/title24/c028/index.shtml>

Delaware's Professional Engineer's ACT

<https://dape.org/Documents/view/316/2021-03-10%20Law%20Book.pdf>

Delaware's Professional Engineers Administrative Penalty Guidelines

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Delaware's Professional Engineers Continuing Professional Competency (CPC) Guidelines

<https://www.dape.org/files/DAPE-CPC-Guidelines-Rev-2023-07-12.pdf>

National Society of Professional Engineers, Code of Ethics

<http://www.nspe.org/resources/ethics/code-ethics>