



ENGINEERING ETHICS

CEAM - 2020 VIRTUAL FALL CONFERENCE

Gunther O. Carrle, Esquire
General Counsel – Professional Services
McCormick Taylor



LEARNING OBJECTIVES

- Understand the meaning and purpose of ethical principles in providing professional services.
- Identify the sources of ethical standards and guidelines in professional conduct.
- Discuss ethical principles as applied to your professional conduct.
- Discuss ethical principles as applied to professional competency.

OVERVIEW AND INTRODUCTION TO ENGINEERING ETHICS

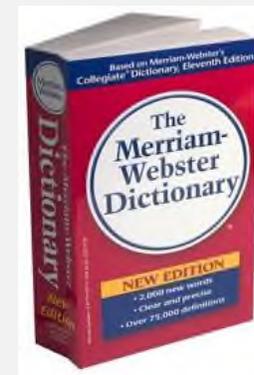
YOUR OBLIGATIONS AS A PROFESSIONAL

- As members of this profession, an engineer's technical performance is evaluated based on a set of legal principles – which include the standard of care. However, your conduct as a professional is evaluated by a far broader set of aspirations/guidelines/standards/principles that we will discuss in this presentation. Engineers are expected to exhibit the highest standards of honesty and integrity. Those standards impact how you get work/how you conduct yourself with the public/how you conduct yourself with your colleagues and clients and employers and employees. They impact how you represent yourself and who you can hire and for whom you can work. They address every aspect of your professional and business life.

MERRIAM-WEBSTER'S DEFINES ETHICS AS:

- a. a set of moral principles; a theory or system of moral values
- b. a guiding philosophy
- c. the principles of conduct governing an individual or a group professional
- d. a consciousness of moral importance

In our situation these ethics set forth not only a moral standard (“the embodiment of what our parents taught us”), but also a set of legal, professional and social principles that define - not only our conduct as individuals - but our conduct as a profession. They comprise our individual integrity and our professional responsibility.



SOURCES OF PROFESSIONAL ETHICS CODES



Personal Ethics and Common Societal Definition of Morality.



Professional Codes of Ethics which articulate shared standards of professional ethics (NSPE, ASCE, ASME).



Licensing Statutes and Regulations and Legislation on Conflicts of Interest.



Government policies and Executive Orders.



Client guidelines for pre-qualification.



Contracts (with increasing frequency client mandate adherence to a set of ethical business practices – not just related to bribery and honesty, but to more basic conduct as well – who do you hire, etc.).



Common Law (Court and Licensing Board Decisions).

YOUR OBLIGATIONS AS A PROFESSIONAL

- Professional ethics are not synonymous with, or limited by, common morality. They go further, to include agreed upon rules on professional and business conduct.
- Professional ethics are a set of standards defined by the professional community which provide a guide for behavior that is expected from the professional.
- Ethics are “Preventative” to eliminate unacceptable conduct and “Aspirational” to encourage improvement in best practices.
- Engineers’ Professional Ethics encompass aspects of business practice, design, construction, and operations within the built environment and, with increasing frequency (the AIA), elements of social justice.

HISTORY OF NSPE'S CODE OF ETHICS FOR ENGINEERS

History of the Code of Ethics for Engineers

- Codes of ethics appeared in England in the middle of the nineteenth century and in the United States early in the twentieth century.
- In 1912 the American Society of Mechanical Engineers (ASME) proposed to the American Society of Civil Engineers (ASCE) and the Institute of Electrical Engineers (IEE) that a code for all three societies be constructed. The attempt was unsuccessful due to differences in the disciplines and their different relationships to business. The societies agreed that a code of ethics was desirable, and each society wrote its own.
- Early codes focused on such issues as limiting professional advertising, protecting small businesses and consulting firms from underbidding, and the primacy of the obligation of engineers to their clients and employers.
- In 1946, the NSPE Board approved the Canons of Ethics.
- In 1957, NSPE Board adopted Rules of Professional Conduct to supplement the canons.
- In 1974, when the ECPD adopted a new code of ethics that held that the paramount obligation of engineers was to the health, welfare, and safety of the public
- The Canons and Rules of Practice are not static documents; they have been and will be revised as experience and changed circumstances require.

SOURCES OF ETHICAL GUIDELINES

THE SIX FUNDAMENTAL NSPE CANONS



Hold Paramount the safety, health and welfare of the Public.



Perform services only in areas of competence.



Issue public statements only in objective and truthful manner.



Act for each employer and client as faithful agents.



Avoid deceptive acts.



Conduct yourself honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation and usefulness of the profession.

NSPE CODE OF
ETHICS FOR
ENGINEERS

- PREAMBLE
 - Engineering is an important and learned profession.
 - Direct and vital impact on the quality of life for all people
 - Services provided require honesty, impartiality, fairness, and equity ***and must be dedicated to the protection of public health, safety, and welfare.***

ENGINEERING ETHICS GUIDING PRINCIPLE

15

Public policy concerns are the primary rationale for Licensure Laws: “To Protect the public...”

In Maryland (Maryland Code §14-101 and Md Regs. Code Tit. 9.23.01) “The purposes of this title are to safeguard life, health, and property and to promote the public welfare by regulating persons who practice engineering in the State.”

Responsibility to the Public: “A licensee shall make every reasonable effort to protect the safety, health, property, and welfare of the public. If the licensee's professional judgement is overruled under circumstances when the safety, health, property, or welfare of the public is endangered, the licensee shall inform the employer or client of the possible consequences.”

The Engineer, Land Surveyor and Geologist Registration Laws of most states provide: “In order to safeguard life, health or property and to promote the general welfare, it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer, for any person to practice or to offer to practice land surveying, unless he is licensed and registered under the laws of this Commonwealth as a professional land surveyor or for any person to practice or to offer to practice.

BALANCING PUBLIC SAFETY AND DUTIES TO EMPLOYER OR CLIENT

- The duty to the public essentially overrides other obligations.
- Section II 1 (a) of NSPE: “If an engineer’s 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.”
- Md Regs. Code Tit. 9.23.01: Responsibility to the Public: “* * * If the licensee's professional judgement is overruled under circumstances when the safety, health, property, or welfare of the public is endangered, the licensee shall inform the employer or client of the possible consequences.”
- New Jersey - 40 NJ Code 13:40-3.5(a)(1): “If the client or employer insists on such conduct, the licensee shall *notify the proper authorities and withdraw from further service on the project.*”
- Delaware Code of Ethics: “If his professional judgement 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.*”

STATE REGISTRATION AND LICENSING LAWS

Ethics Components of State Registration and Licensing Laws

State Registration Laws and Regulations typically incorporate an Ethics Component

- Maryland Md Code Ann, Bus. Occ. and Prof. § 14-205 ; Md Regs. Code Tit. 9.23.03 *et seq.*
- New Jersey N.J.S.A. 45:8-27; 40 N.J.A.C. § 13:40-3.5;
- PA Engineer Registration Law, 63 P.S. Sections § 151 (g)(1)-(10)
- Delaware's Engineering Code of Ethics
- Virginia Professional Responsibility Code – Virginia Administrative Code 18VAC10-20-740 and Virginia Code of Professional Practice and Conduct – Code of Virginia § 54.1-404.
- New York Educ. Law § 7200 *et seq.*; Rules of Board of Regents § 29.3; and Engineer Board Practice Guidelines (no force and effect of law).
- Firms are also impacted by various state and county statutes and regulations – Maryland Public Ethics Law administered by State Ethics Commission covers conflicts of interest including financial interests and private sector employment; Maryland Code, State Finance and Procurement § 13-212.1 addresses situations where prior involvement with project prevent future involvement; New Jersey Conflicts Law, for example, covers post-employment in N.J.S.A. 52:13D-17; the Ethics Act in Pa/the Adverse Interest Act in Pa which limits involvement in certain projects/the Governor's Code of Conduct in Pa (impacting interaction with government employees), etc.

STATE REGISTRATION AND LICENSURE LAWS

- Engineers have a professional responsibility to adhere to state registration laws and regulations (and hence to their ethical and professional responsibility mandates).
- NSPE Code of Ethics specifically states that “Engineers shall conform with state registration laws in the practice of engineering.” Canon III 8(a).
- “The [Maryland] Board . . . may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if: * * * the applicant or licensee violates any regulation adopted by the Board; * * [i]nstead of . . . reprimanding a licensee or suspending or revoking a license . . . , the Board may impose a penalty not exceeding \$5,000 for each violation.”

YOUR OBLIGATIONS AS A PROFESSIONAL

Violating the professional standards of behavior can have financial and legal consequences.

PUNISHMENT FOR MISCONDUCT

- (a) (1) Subject to the hearing provisions of § 14–319 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, **may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license** if:
- (i) the applicant or licensee fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
 - (ii) the applicant or licensee fraudulently or deceptively uses a license;
 - (iii) under the laws of the United States or of any state, the applicant or licensee is convicted of:
 1. a felony; or
 2. a misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to practice engineering;
 - (iv) **the applicant or licensee is guilty of gross negligence, incompetence, or misconduct while practicing engineering;**
 - (v) **the applicant or licensee has had a license to practice engineering in another state revoked or suspended by the other state for a cause that would justify revocation or suspension under this title, except for the failure to pay a license fee;**
 - (vi) **the applicant or licensee violates any regulation adopted by the Board;** or
 - (vii) **the applicant or licensee violates any provision of this title.**
- (2) (i) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this subsection, **the Board may impose a penalty not exceeding \$5,000 for each violation.**
- (ii) To determine the amount of the penalty imposed under this subsection, the Board shall consider:
 1. the seriousness of the violation;
 2. the harm caused by the violation;
 3. the good faith of the licensee; and
 4. any history of previous violations by the licensee.
 - (3) The Board shall pay any penalty collected under this subsection into the General Fund of the State.
- (b) The Board shall consider the following facts in the granting, denial, renewal, suspension, or revocation of a license or the reprimand of a licensee when an applicant or licensee is convicted of a felony or misdemeanor described in subsection (a)(1)(iii) of this section:
- (1) the nature of the crime;
 - (2) the relationship of the crime to the activities authorized by the license;
 - (3) with respect to a felony, the relevance of the conviction to the fitness and qualification of the applicant or licensee to practice engineering;
 - (4) the length of time since the conviction; and
 - (5) the behavior and activities of the applicant or licensee before and after the conviction.

PUNISHMENT FOR MISCONDUCT

- Termination for breach of contract.
- Disqualification from pursuing projects.

MARYLAND P.E. CODE OF ETHICS

- Public statements, reports, and testimony may not be untruthful, deceptive, or misleading and must be founded upon adequate knowledge of the material facts and a background of technical competence in the subject matter. You must disclose if you are being compensated for making the statement or report or giving the testimony.
- **You must avoid conflicts of interest with your employer or client** and disclose promptly and fully all the circumstances that could give rise to such a conflict including any business association, interest, or circumstances which may influence your judgement or the quality of services rendered by you.
- You may not accept compensation, financial or other, from more than one party for services pertaining to a project unless full disclosure is made to all interested parties.
- You may not solicit or accept financial or other valuable consideration from any material or equipment supplier for specifying the supplier's products, except if you have previously disclosed that you are an employee or agent of the supplier.
- When acting as the interpreter of engineering documents and the judge of performance under the documents, you must render decisions impartially, not favoring either party to the documents.
- You must make full disclosure which accurately represents to a prospective or existing client or employer of your qualifications and the scope of your responsibility in connection with work for which you are claiming credit.
- You may not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with your application for licensure or renewal of licensure.
- You must comply with state and federal criminal laws in conducting your engineering practice.
- You must comply with the licensing laws and regulations governing the professional practice in Maryland or any other jurisdiction in which you practice engineering.
- You may not either offer or make any payment or gift to a government official, whether elected or appointed, with the intent of influencing the official's judgment in connection with a prospective or existing project in which the licensee is interested.
- You may not either offer or make any gifts, other than gifts of nominal value including, for example, reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the licensee is interested.
- You may not engage in conduct involving fraud or wanton disregard of the rights of others.
- You may not assist the application for licensure of a person known by you to be unqualified in respect to education, training, experience, or character.
- If you possess knowledge of a violation of this chapter by another licensee, you must report this knowledge to the Board.

CONFLICT OF INTEREST

ETHICAL CONFLICT OF INTEREST

“A conflict of interest arises when what is in a person’s [or a company’s] best interest is not in the best interest of another person or organization to which that individual [or company] owes loyalty. ... A conflict of interest can also exist when a person must answer to two different individuals or groups whose needs are at odds with each other.”

“The presence of a conflict of interest is independent of the occurrence of inappropriateness. Therefore, a conflict of interest can be discovered and voluntarily defused before any corruption occurs. A conflict of interest exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a *risk* that a decision *may* be unduly influenced by other, secondary interests, and not on whether a particular individual *is actually* influenced by a secondary interest.”

CONFLICT OF INTEREST

- Ethical questions involving conflicts of interest are among the most common ethical concerns facing engineering practitioners.
- Most Codes of Professional Responsibility as set forth in licensure laws or regulations, public and private client policies and, with increasing frequency, contracts for services, contain definitions and restrictions on conflicts of interest. The NSPE Code of Ethics for Engineers provides a good starting point for discussion:
- **Canon II.4.** Engineers shall act for each employer or client as faithful agents or trustees.
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.

CONFLICT OF INTEREST – NSPE CANONS



Canon III.1.e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.



Canon III.2. Engineers shall at all times strive to serve the public interest.



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



Canon III.5.a. Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.



CONFLICT OF INTEREST

- There are countless examples. Here are just a few at a minimum, merit further discussion: 29
 - Receiving a gift, favor, or benefit from any business partner (specifically outside the occasional gift of nominal value that is ordinarily and customarily given in the usual course of business).
 - Having a significant ownership interest in any business partner.
 - Competing in any manner with the employer.
 - Having a consulting or employment relationship with any business partner.
 - Having an outside business activity that detracts from the employee's ability to devote appropriate time and attention to his/her responsibilities at the company.
 - Selling or buying anything from the employer, except on the same terms and conditions as all other employees are permitted to purchase or sell.
 - Taking advantage of a corporate opportunity for personal gain that is discovered or obtained using company property, information, or position and which would compete with company.
 - Preparing an RFP for a client for which you intend to submit a proposal.
 - Providing services for a contractor on a project for which you are also engaged by the client.
 - Reviewing one's own design for a client.
 - Using a position to create opportunities others do not have.

CONFLICT OF INTEREST

- There are statutory embodiments of conflicts of interest. For example:
- **Maryland Ethics Law:** A former official or employee may not assist or represent anyone other than the State for compensation in a case, contract or other specific matter involving the State, if that matter is one in which he or she significantly participated as an official or employee.
- **Pennsylvania Adverse Interest Act: Section 776.3** - *Adverse interest of state advisor or consultant.* No State advisor or State consultant having recommended to the State agency which he serves, either the making of a contract or a course of action of which the making of a contract is an express or implied part, shall, at any time thereafter, have an adverse interest in such contract.
- **New Jersey Ethics Act N.J.S.A. 52:13D-17 provides** - No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to . . . whether by himself or through any partnership, firm or corporation in which he has an interest . . . , any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been *otherwise substantially and directly involved* at any time during the course of his office or employment.
- **State of New Jersey Executive Order #134** - No business entity which agrees to any contract or agreement with the State or any department or agency thereof or its independent authorities either for the rendition of services or furnishing of any material, supplies or equipment or for the acquisition, sale, or lease of any land or building, if the value of the transaction exceeds \$17,500, shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate or holder of the public office of Governor or to any State or county political party committee prior to the completion of the contract or agreement.

ACTIVITIES GOVERNED BY THE CONFLICT OF INTEREST PROVISIONS

- The Ethics Law contains the following general types of prohibitions.
- 1. An employee or official may not participate in a matter in which he or she has an interest. This prohibition also applies where an official's or employee's relatives (spouse, children, brother, sister or parents), or certain entities has/have an interest. Non-participation includes any discussion, advising or deciding of the matter and requires disclosure of the conflict.
- 2. An official or employee may not participate in a matter when one of the parties is a business entity in which he or she has an employment, contractual or creditor relationship. This prohibition also applies when certain relatives (spouse, children, brother, sister or parents) have such a relationship. Non-participation includes any discussion, advising or deciding of the matter and requires disclosure of the conflict.
- 3. An official or employee may not participate in a matter in which he or she is negotiating employment with a party to the matter. This prohibition also applies where certain relatives are negotiating employment with a party to the matter.
- 4. In most instances an official or employee may not have a financial interest in, or be employed by an entity subject to, the authority of the official or employee, or of the agency with which he or she is affiliated.
- 5. In most instances an official or employee may not have a financial interest in or be employed by an entity having or negotiating a contract with the agency with which he or she is affiliated.
- 6. An official or employee may not hold any employment relationship that would impair his or her impartiality or independence of judgment.
- 7. An official or employee may not intentionally use the prestige of his or her office for personal gain or that of another. This prohibition means an official or employee may not use any influence he/she may have to obtain a special benefit for himself/herself or another or use state resources for personal benefit or to benefit another. This includes but is not limited to: influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; or using public resources or title to solicit a political contribution.
- 8. An official or employee whose duties include matters substantially relating to the subject matter of any contract with the State may not become, while he or she is an official or employee of the State, an employee of the party contracting with the State.
- 9. An official or employee may not assist or represent a party for contingent compensation in any matter involving any State agency or political subdivision other than in a judicial or quasi-judicial proceeding. Additionally, judicial branch employees may not represent persons before the judicial branch even if not for contingent compensation.
- **10. A former official or employee may not assist or represent anyone other than the State for compensation in a case, contract or other specific matter involving the State, if that matter is one in which he or she significantly participated as an official or employee.**
- **11. An official or employee may not solicit any gift for him or herself or for others. Subject to certain exceptions, an official or employee may not knowingly accept any gift directly or indirectly from any person whom the official or employee knows or has reason to know: • is doing or seeking to do business of any kind with his/her agency or department; • is engaged in activities that are regulated or controlled by his/her agency or department; • has financial interests that may be substantially affected in a specific way by the official or employee; or • is a lobbyist with respect to the matters within the employee's or official's functional jurisdiction. There are limited exceptions for certain nominal gifts addressed in Md. Code Ann., General Provisions § 5-505.**
- 12. An official or employee may not disclose or use for personal economic benefit, or that of another, confidential information acquired by reason of his or her public position.
- 13. An official or employee subject to the Ethics Law may not also be registered as a lobbyist.

BRIBERY OR GIVING AND RECEIVING OF GIFTS

- Giving gifts to clients or business partners for favorable consideration is always prohibited:
- **NSPE Canon II 5.b.** “Engineers shall avoid deceptive acts.* * * 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.”
- The giving of occasional gifts of *nominal* value that are ordinary and customary in the usual course of business and are **clearly not intended to induce special consideration** or favor or to create a potential conflict of interest *may* be acceptable.
- Gifts and political contributions can be made legally and ethically, but engineers must be careful not to create a conflict of interest or an appearance that the contribution is to secure work (*Quid Pro Quo* is prohibited) and must comply with applicable law and client/employer guidelines.
- Client policies and orders issued by government frequently prohibit acceptance of gifts even of nominal value. For example,
 - Maryland Executive Order (01.01.2015.08) (Amends Executive Order 01.01.2015.07): Standards Of Conduct For Executive Branch Employees and Reporting of Misconduct: a. An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties. Receiving Gifts from clients or business partners
 - Pennsylvania Executive Order: 2015-01 - Executive Branch Employee Gift Ban: Gifts and favors. (a) No employee, appointee or official in the Executive Branch of the Commonwealth may solicit or accept for the personal use of the employee or another, a gift, gratuity, favor, entertainment, hospitality, loan or any other thing of monetary value, including in-kind gifts from a person who: (1) Is seeking to obtain business from or has financial relations with the Commonwealth.
- Receiving gifts from clients or business partners for favorable consideration is always prohibited. Absent specific legal prohibition or an employer policy to contrary, acceptance of gifts of nominal value as common courtesies usually associated with accepted business practices.

OTHER STATES

PROHIBITED ACTS UNDER NEW JERSEY ADMINISTRATIVE CODE

Misconduct in the practice of professional engineering or professional land surveying shall include, without limitation:

- Acting for his or her client or employer in professional matters otherwise than as a faithful agent or trustee; accepting any remuneration other than his or her stated recompense for services rendered;
45 N.J.C. § 13:40 – 3.5(1)
- Disregarding the safety, health and welfare of the public in the performance of his or her professional duties: preparing or signing and sealing plans, surveys or specifications which are not of a safe design and/or not in conformity with accepted standards. If the client or employer insists on such conduct, the licensee shall notify the proper authorities and withdraw from further service on the project.
45 N.J.C. § 13:40 – 3.5(2)
- Advertising in violation of N.J.A.C. 13:40-3.3.
45 N.J.C. § 13:40 – 3.5(3)

PROHIBITED ACTS UNDER NEW JERSEY ADMINISTRATIVE CODE

Engaging in any activity which involves him in a conflict of interest, including without limitation:

- i. A licensee shall inform his client or employer of any business connection, interest or circumstance which might be deemed as influencing his judgment or the quality of his services to the client or employer.
- ii. When in public service as a member, advisor or employee of a governmental agency, a licensee shall not participate in the deliberations or actions of such agency with respect to services rendered or to be rendered by the licensee or any firm or organization with which he is associated in private practice.
- iii. A licensee shall not solicit or accept a professional contract from a governmental agency upon which a principal, officer or employee of his firm or organization serves as a member, advisor or employee.
- iv. A licensee shall not accept compensation or remuneration, financial or otherwise, from more than one interested party for the same service or for services pertaining to the same work, unless there has been full disclosure to and consent by all interested parties.
- v. A licensee shall not accept compensation or remuneration, financial or otherwise, from material or equipment suppliers for specifying their product.
- vi. A licensee shall not accept commissions or allowances, directly or indirectly, from contractors or other persons dealing with his client or employer in connection with work for which he is responsible to the client or employer.

45 N.J.C. § 13:40 – 3.5(4)

PROHIBITED ACTS UNDER NEW JERSEY ADMINISTRATIVE CODE

- Affixing his or her signature and seal to any plans, specifications, plats or reports or surveys which were not prepared by him or her or under his or her supervision by his or her employees or subordinates. [Is sealing contractor prepared as-builts a violation?]
45 N.J.C. § 13:40 – 3.5(5)
- Failure to comply with federal, state or local laws, rules or regulations relating to the practice of the profession.
45 N.J.C. § 13:40 – 3.5(6)
- Permitting or allowing any person not appropriately licensed pursuant to N.J.S.A. 45:8-27 *et seq.* or this chapter to act for or on behalf of the licensee as his representative, surrogate or agent while appearing before any public or private body for the purpose of rendering professional engineering or professional land surveying services.
45 N.J.C. § 13:40 – 3.5(7)

PROHIBITED ACTS UNDER NEW JERSEY ADMINISTRATIVE CODE

- Failure to determine and document the identity of the client prior to commencing any work. All correspondence, contracts, bills shall be addressed to that client, unless expressly directed otherwise, in writing, by the client.
45 N.J.C. § 13:40 – 3.5(8)
- Failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
45 N.J.C. § 13:40 – 3.5(9)
- Failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions.
45 N.J.C. § 13:40 – 3.5(10)
- Failure of a licensee to respond in writing within 30 days to a written communication from the State Board of Professional Engineers and Land Surveyors with respect to any investigative inquiry relating to the possible violation of any statute or regulation administered by the Board, and to make available any relevant records with respect to such an inquiry. The 30-day period shall begin on the day when such communication was sent from the Board by certified mail with return receipt requested to the address appearing on the last registration.
45 N.J.C. § 13:40 – 3.5(11)

PROHIBITED ACTS UNDER NEW JERSEY ADMINISTRATIVE CODE

Rendering engineering or land surveying services and/or professional opinions when not qualified by training, education and experience in the specific discipline of professional engineering and/or professional land surveying that is involved.

45 N.J.C. § 13:40 – 3.5(12)

Engaging in any activity which results in suspension, revocation or surrender of a professional license or certification in another jurisdiction.

45 N.J.C. § 13:40 – 3.5(13)

Failure to comply with the requirements set forth in N.J.A.C. 13:40-5.1(d) and 5.2 concerning the waiver of the setting of corner markers.

45 N.J.C. § 13:40 – 3.5(14)

PROHIBITED ACTS UNDER PENNSYLVANIA ENGINEER REGISTRATION LAW

It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer, professional land surveyor or professional geologist:

- (1) To act for his client or employer in professional matters otherwise than as a faithful agent or trustee, or to accept any remuneration other than his stated recompense for services rendered.
- (2) To attempt to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone.
- (3) To attempt to supplant another engineer, land surveyor or geologist after definite steps have been taken toward his employment.
- (4) To compete with another engineer, land surveyor or geologist for employment by the use of unethical practices.
- (5) To review the work of another engineer, land surveyor or geologist for the same client, except with the knowledge of such engineer, land surveyor or geologist, or unless the connection of such engineer, land surveyor or geologist with the work has terminated.

PROHIBITED ACTS UNDER PENNSYLVANIA ENGINEER REGISTRATION LAW

It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer, professional land surveyor or professional geologist:

* * *

- (6) To attempt to obtain or render technical services or assistance without fair and just compensation commensurate with the services rendered: Provided, however, the donation of such services to a civic, charitable, religious or eleemosynary organization shall not be deemed a violation.
- (7) To advertise in self-laudatory language, or in any other manner, derogatory to the dignity of the profession.
- (8) To attempt to practice in any field of engineering, land surveying or geology in which the registrant is not proficient.
- (9) To use or permit the use of his professional seal on work over which he was not in responsible charge.
- (10) To aid or abet any person in the practice of engineering, land surveying or geology not in accordance with the provision of this act or prior laws.

PROHIBITED ACTS UNDER PENNSYLVANIA ADMINISTRATIVE CODE FOR ENGINEERS

§ 37.81. Misconduct.

A professional engineer, professional land surveyor or professional geologist who is found guilty by the Board of gross negligence, incompetency or misconduct in the practice of engineering, land surveying or geology or of a violation of the Code of Ethics of the profession of engineering or land surveying is subject to disciplinary action under section 4(g) of the act (63 P. S. § 151(g)). Misconduct in the practice of engineering, land surveying or geology includes the following:

- (1) Being convicted of a criminal offense such as extortion, bribery or fraud or entry of a plea of nolo contendere to a charge thereof for conduct relating to the practice of engineering, land surveying or geology.
- (2) Being unable to practice engineering, land surveying or geology with reasonable skill and safety by reason of drunkenness, use of controlled substances, chemicals or other types of inhibiting materials, or as a result of a mental or physical incapacity which prevents the practice of engineering, land surveying or geology.

PROHIBITED ACTS UNDER PENNSYLVANIA ADMINISTRATIVE CODE FOR ENGINEERS

§ 37.81. Misconduct (continued):

- (3) Failing to exercise supervision over a person who is authorized by the employer to practice engineering, land surveying or geology only under the supervision of a professional engineer, professional land surveyor or professional geologist.
- (4) Delegating responsible charge to an individual who the professional engineer, professional land surveyor or professional geologist knows or has reason to know is not qualified by training or experience to personally and independently engage in and be entrusted with the work involved in the practice of engineering, land surveying or geology.
- (5) Being convicted of a felony in a state or Federal court or being convicted of a misdemeanor in the practice of engineering, land surveying or geology. As used in this paragraph, the term “convicted” includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.
- (6) Making misleading, deceptive, untrue or fraudulent representations in the practice of engineering, land surveying or geology.

PROHIBITED ACTS UNDER PENNSYLVANIA ADMINISTRATIVE CODE FOR ENGINEERS

§ 37.81. Misconduct (continued):

- (7) Practicing fraud or deceit in obtaining a license to practice engineering, land surveying or geology.
- (8) Submitting a false or deceptive biennial registration to the Board.
- (9) Reviewing on behalf of a public entity or an agency of government plans on which the individual performing the review, or a member or employee of the individual's firm, has participated in any manner, including an advisory capacity. A violation of the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. § § 401—413), known as the Public Official and Employee Ethics Law, as the violation relates to the practice of engineering, land surveying or geology, is a violation of this section and chapter.
- (10) Violating a provision of the act or this chapter
- (11) Having a license to practice engineering, land surveying or geology suspended or revoked or having other disciplinary action taken for conduct relating to the practice of engineering, land surveying or geology, by the proper licensing authority of another state, territory or country.

PENNSYLVANIA DISCIPLINARY ACTION

The **Licensing Board** may **discipline** an engineer as follows:

- Refuse a certificate or license to an applicant;
- Suspend a license;
- Revoke a certificate;
- Censure or issue a letter or reprimand;
- Impose a Civil Penalty.

PENNSYLVANIA PENALTIES FOR VIOLATIONS OF REGISTRATION LAW

Violating the Engineering Registration Law by practicing or offering to practice engineering without a valid license, or violating the law in any other manner...

- Summary offense: fine not exceeding \$1,000 and imprisonment not exceeding 3 months.
- Second offense: felony punishable by a fine of \$2,000 to \$5,000 and imprisonment between 1 to 2 years.
- Board can also issue a civil penalty up to \$1,000 to anyone who violates the Act or practices engineering without a license. 63 Pa. Stat. Ann. § 158(b)
- Important Note: Act 48 Amendment authorizes up to \$10,000 per violation See 63 P.S. 2205(b)(1))

Competency and Responsible Charge

PROFICIENCY AND COMPETENCY TO PRACTICE A BRANCH OF ENGINEERING

- The Engineer shall undertake to perform engineering only when qualified by education or experience in the areas of professional engineering involved.
- An Engineer may only perform services in branches of engineering that they are proficient or competent. (*See* NSPE Code of Ethics for Engineers Ethics Canon II; New Jersey Administrative Code 1:40-3.5(12); Delaware Code of Ethics 2.A).
- “A licensee may sign and seal plans, specifications, drawings, reports, or other documents that are required to be signed and sealed . . . , only if . . . [t]he licensee is competent in the subject matter of those documents by virtue of education or experience, or both.” (Maryland Regs. Code Tit. 9.23.09).
- Proficiency or Competency: established by training, education or experience.

RESPONSIBLE CHARGE

- Responsible Charge is critical to meaningful application of competency to engineering services.
- The National Council of Examiners for Engineering and Surveying Model Law (Aug. 2007) defines the term as follows:
 - “The term responsible charge, as used in this Act, shall mean direct control and personal supervision of engineering work or surveying as the case may be.
 - ”The term “responsible charge” connotes a direct control or personal supervision of the engineering work by the engineer who ultimately signs and seals the design documents.
 - The degree of control shall be such that the engineer of record:
 - Personally makes engineering decisions or reviews proposed decisions when decisions of public health, safety and welfare are at issue.
 - Be physically present or available in a reasonable time via electronic communications devices.
 - Judges the validity and applicability of recommendations prior to their incorporation into the work.

RESPONSIBLE CHARGE MODEL LAW

National Council of Examiners for Engineering and Surveying Model Law (Aug. 2007) defines the term as follows:

- “The term responsible charge, as used in this Act, shall mean direct control and personal supervision of engineering work or surveying as the case may be.”
- The term “responsible charge” connotes a direct control or personal supervision of the engineering work by the engineer who ultimately signs and seals the design documents.



RESPONSIBLE CHARGE MODEL LAW

- The degree of control shall be such that the engineer of record:
 - Personally makes engineering decisions or reviews proposed decisions when decisions of public health, safety and welfare are at issue
 - Be physically present or available in a reasonable time via electronic communications devices
 - Judges the validity and applicability of recommendations prior to their incorporation into the work

RESPONSIBLE CHARGE DEFINED

In Maryland, “*Responsible charge*” means direct control and personal supervision of engineering that requires initiative, professional skill, and independent judgment.

Maryland Code §14-101(I)(1)

Responsible charge” means the rendering of regular and effective supervision by a competent professional engineer or professional land surveyor to those individuals performing services that directly and materially affect the quality and competence of the professional services rendered by the licensee.

13 NJAC § 13:40-1.3

MARYLAND REQUIREMENT FOR SEALING

Maryland Regs. Code Tit. 9.23.09

Signing and Sealing Requirements.

- A. A licensee may sign and seal plans, specifications, drawings, reports, or other documents that are required to be signed and sealed pursuant to . . . , only if the following requirements are met:
 - (1) The licensee is competent in the subject matter of those documents by virtue of education or experience, or both; and
 - (2) The licensee either:
 - (a) Personally prepared the documents, or
 - (b) Approved the documents.
- B. Definition. For purposes of §A(2)(b) of this regulation, the term "approved" means that the licensee satisfied the following criteria:
 - (1) Had technical knowledge and responsible control over the content of technical submissions during their preparation; and
 - (2) Performed substantive review and had authority to make revisions with regard to the preparation of submissions described in this regulation.
- C. A licensee may complete, correct, revise, or add to the work performed by another licensee when engaged to do so by a client, if the following requirements are met:
 - (1) The client furnishes the documentation of the work submitted to the client by the first licensee;
 - (2) The first licensee, if still engaged in a business of providing engineering services, is notified in writing by the second licensee of the engagement referred to in this section immediately upon acceptance of the engagement; and
 - (3) The second licensee signs, seals, and is responsible for the completions, corrections, revisions, or additions that the second licensee made.
- D. Nothing in §C of this regulation is intended to relieve the first licensee from any liability that the first licensee is deemed to assume for work performed by the first licensee pursuant to the requirements set forth in this regulation.

RESPONSIBLE CHARGE IN PENNSYLVANIA

The Engineer Registration Law defines “Responsible Charge” as “a position that requires initiative, skill and independent judgment, and implies such degree of competence and accountability gained by technical education and experience of a grade and character as is sufficient to qualify an individual to personally and independently engage in and be entrusted with the work involved in the practice of engineering or land surveying. This term does not include positions which require routine performance of subprofessional work such as auxiliary survey personnel (unless acting as chief of party) and drafting personnel.”

RESPONSIBLE CHARGE IN NEW JERSEY

The statutory and regulatory requirements for being in “Responsible Charge” **prohibit**:

- A licensed engineer from applying a seal to any engineering work unless that engineer was in “responsible charge” (exercised “personal supervision, direction and control”) for that work.
- A corporation, firm, partnership or association from practicing or offering to practice engineering or land surveying in this State unless the person or persons in “responsible charge” of engineering or land surveying work shall be so licensed to practice in this State.

45 N.J.S.A. §8-27

APPLICATION OF SEAL REPRESENTS THAT LICENSEE WAS IN RESPONSIBLE CHARGE

- a) The application of a signature and seal to documents relating to the practice of professional engineering and/or professional land surveying shall indicate that the licensee has provided regular and effective supervision to those individuals performing services that directly and materially affect the quality and competence of the engineering or land surveying work rendered.
- b) The signature and/or seal signifies that the licensee takes professional responsibility for the document based upon the accepted standards of practice in place at the time the documents were sealed.
- c) Where the document includes the work of more than one professional, each professional shall sign and seal the document with clear reference to the work that he or she has performed. See "N.J.A.C. 13:40-8.6 for title block requirements.

APPLICATION OF SEAL REPRESENTS THAT LICENSEE WAS IN RESPONSIBLE CHARGE

e) A licensee shall not affix a signature and/or seal to documents constituting the practice of the profession regulated which have been prepared by another person unless such work was performed under the direction and supervision of the licensee.

f) Incomplete and/or draft plans, documents and sketches, whether advanced or preliminary copies, shall be conspicuously identified and may be signed but shall not be sealed, provided that the licensee inserts the language that “This is not a sealed document” in place of the seal in the title block.

REQUIREMENTS OF RESPONSIBLE CHARGE

DEFINED

57

- a) A licensee in responsible charge of an engineering or land surveying project shall render regular and effective supervision to those individuals performing services which directly and materially affect the quality and competence of engineering or land surveying work rendered by the licensee.
- b) A licensee shall maintain such records as are reasonably necessary to establish that the licensee exercised regular and effective supervision of an engineering or land surveying project of which he was in responsible charge.

REQUIREMENTS OF RESPONSIBLE CHARGE DEFINED

A licensee engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

- The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;
- The failure to personally inspect or review the work of subordinates where necessary and appropriate;
- The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review;
- The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

USE OF MULTIPLE SEALS

- When multiple engineers prepare or direct and control the preparation of documents, each engineer's seal who is in charge of a technical section must generally appear on the first page of the documents.
- Alternatively, the engineer's seal must appear on the first page of the identifiable portion or section of the documents which were prepared or directed and controlled by that registrant, if the respective registrants' direction and control can be reasonably segregated. (NSPE Code Section II. 2.c)

QUESTIONS?

- Please feel free to ask questions now.