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Engineering Ethics for Ohio Professional Engineers

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Chapter 1

Overview of the Ohio Engineering Ethics, Laws and Rules

Engineering Ethics

Engineering ethics is (1) the study of moral issues and decisions confronting individuals and organizations involved in engineering and (2) the study of related questions about moral conduct, character, ideals and relationships of peoples and organizations involved in technological development (Martin and Schinzinger, *Ethics in Engineering*).

Ohio State Board of Registration for Professional Engineers and Surveyors

The Ohio State Board of Registration for Professional Engineers and Surveyors (Board) was created with the charge of protecting life, health, and property and to promote the public welfare. The Board consists of five members: four professional engineers, at least one of whom also is a professional surveyor, and one professional surveyor. All members are appointed by the Governor, with the advice and consent of the senate, for a term of five years.

The Board reviews applications, administers examinations, licenses qualified applicants, and regulates the professional practice of licensees throughout the state. The Board has the power to adopt rules, set standards for licensure, adopt mandatory standards of professional conduct and ethics, and investigate and discipline unauthorized, negligent, unethical or incompetent practice. The Board has the authority to implement provisions of Ohio Revised Code Chapter 4733 and Ohio Administrative Code Chapter 4733.

Ohio Revised Code (Laws)

The Ohio Revised Code includes all statutes of a permanent and general nature of the state as revised and consolidated into general provisions, titles, chapters, and sections including all bills passed and filed through June 18, 2010. Chapter 4733 of the revised code regulates the practice of engineering in the State of Ohio and is continuously updated by laws that create, amend, or repeal statutory material. The Ohio Revised Code states each law followed by the history of the law which indicates when it was originally filed and subsequent effective dates of enactment.

Pertinent sections of Chapter 4733, which relate to the code of professional conduct and responsibility, are presented in Chapter 2 below.

Ohio Administrative Code (Rules)

The Ohio Administrative Code contains a codification of the rules of the administrative agencies of the state and updated for all regulations passed and filed through September 20, 2010. It is organized by chapters with each chapter number representing a department, commission, board or other agency. Chapter 4733 of the rules regulates the practice of engineering in the State of Ohio and is continuously updated by the Board. The Board rules state the rule followed by the history of the rule which indicates when the rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date.

Pertinent sections of Chapter 4733, which relate to the code of professional conduct and responsibility, are presented in Chapter 3 below.

Ohio Board Disciplinary Authority

Ohio's State Board of Registration for Professional Engineers and Surveyors is charged with administering Ohio Revised Code Chapter 4733 and Ohio Administrative Code Chapter 4733. In addition to evaluating candidates for registration and examinations, the Board investigates alleged violations of the registration law.

Although the Board cannot represent individuals who file complaints, the Board reviews all complaints in a timely manner in order to make sure that the complaint is processed and appropriate action taken. Violations may include:

- Illegal practice of engineering or surveying,
- Aiding and abetting the illegal practice of engineering or surveying,
- Offering engineering or surveying services without a certificate of authorization,
- Plan stamping,
- Code of ethics violations,
- Violations of the minimum standards for boundary surveys or mortgage surveys, and
- Other violations of the Board's registration laws or rules.

Matters such as boundary disputes and failure to fulfill contractual obligations are not within the jurisdiction of the Board and require legal resolution. Likewise, the Board has no power to order restitution and does not establish or review costs for professional services. If wrongdoing by an Ohio registrant is proven in court, the Board will require a certified copy of the order issued by the Court.

The disciplinary process of the Ohio State Board of Registration for Professional Engineers and Surveyors is illustrated in Chapter 4 below. Several disciplinary cases, presented in Chapter 5 below, were selected at random to further illustrate the disciplinary actions taken by the Board. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Board.

Chapter 2

Ohio R.C. Chapter 4733 (Laws)

Chapter 4733: Engineer and Surveyors Board Laws

The following are excerpts from Chapter 4733 of the Ohio Revised code. If you wish to review the entire chapter, please visit the website of the Ohio Board at:

<https://codes.ohio.gov/ohio-revised-code/chapter-4733>

4733.021 Restricting use of title engineer by itself or with other terms

(A) Except for an individual who, as part of the internal classification system of the individual's employer, uses the title "engineer" by itself or in conjunction with another term described in division (B) of this section and who does not represent the individual's self to the public or otherwise advertise the individual's self as an engineer, no individual shall, in connection with the individual's name, assume, use, or advertise:

(1) The title "engineer" by itself unless the individual is an engineer;

(2) The title "engineer" in conjunction with another term that modifies the title "engineer" in a manner that conveys the impression that the individual is a graduate of an accredited engineering curriculum unless the individual is a graduate of an accredited engineering curriculum.

(B) Terms used in conjunction with the title "engineer" under division (A)(2) of this section that imply a person is a graduate of an accredited engineering curriculum include the following: "aerospace," "agricultural," "civil," "chemical," "computer," "electrical," "industrial," "mechanics," "mechanical," "metallurgical," "mining," "naval architectural and marine," "nuclear," and any other term commonly used by an institution of higher learning to apply to graduates of an accredited engineering curriculum.

(C) Nothing in this section shall be interpreted as prohibiting the use, assumption, or advertisement of the title "steam engineer" or "stationary engineer," by or on behalf of a person licensed under Chapter 4739. of the Revised Code, or the term "railroad engineer" or "locomotive engineer," by or on behalf of a person authorized to operate a railroad locomotive, or the term "operating engineer," by or on behalf of a person who operates, maintains, repairs, or manufactures light or heavy construction equipment.

Effective 08-06-2002.

4733.03 State board of registration for professional engineers and surveyors

A state board of registration for professional engineers and surveyors is hereby created to administer this chapter. The board shall consist of four professional engineers, at least one of whom also is a professional surveyor, and one professional surveyor. Members shall be appointed by the governor, with the advice and consent of the senate. Terms of office shall be for five years, commencing on the twenty-fifth day of September and ending on the twenty-fourth day of September. Each member shall hold office from the date of appointment until the end of the term for which appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office. Appointments to the board shall be so limited that no more than one member shall have served more than two consecutive terms. Every member of the board shall receive a certificate of appointment from the governor and before beginning the member's term of office shall file with the secretary of state the member's written oath or affirmation for the faithful discharge of official duties. The governor may remove any member for misconduct, incompetency, neglect of duty, or for other sufficient cause.

Effective Date: 08-06-2002.

4733.07 Administrative rules

The state board of registration for professional engineers and surveyors shall adopt all necessary rules and bylaws, in accordance with Chapter 119. of the Revised Code, and not inconsistent with this chapter, and the constitutions and laws of this state or of the United States, to govern its times and places of meetings for organization and reorganization, for the holding of examinations, and for governing all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its business. The board shall adopt and have an official seal. The board may include among the rules adopted governing the standards of practice of engineering, requirements regarding financial responsibility and professional liability insurance. In carrying this chapter into effect, the board may hold hearings in accordance with sections 119.01 to 119.13 of the Revised Code.

Effective 08-06-2002.

4733.14 Certificate of registration; seals

The state board of registration for professional engineers and surveyors shall, upon payment of the registration fee, register and issue a certificate showing initial registration of an applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In the case of a registered professional engineer, the certificate shall authorize the practice of "professional engineering," and in the case of a registered professional surveyor, the certificate shall authorize the practice of "professional surveying." Certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairperson and the secretary of the board under seal of the board. Registration by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer, or of a registered professional surveyor, while the registration remains unrevoked or unexpired. Each registrant may, upon completing registration, obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "registered professional engineer," or "registered professional surveyor," provided, however, that any registered surveyor's seal obtained prior to the amendment of this section effective April 4, 1985, 140 Ohio Laws 4092, shall remain as a legal seal for any registrant who was registered as a "registered surveyor." Plans, specifications, plats, reports, and all other engineering or surveying work

products issued by a registrant shall be stamped with the seal and be signed and dated by the registrant or bear a computer-generated seal and electronic signature and date, but no person shall stamp, seal, or sign any documents after the registration of the registrant named thereon has expired or the registration has been revoked or suspended, unless the registration has been renewed or reissued.

Effective 12-28-2006 HB699 03-29-2007.

4733.151 Continuing professional development credit required beginning in 2008

(A) For registrations expiring on the last day of December 2011, each registrant for renewal shall have completed, in calendar year 2011, at least fifteen hours of continuing professional development for professional engineers and surveyors. Thereafter, each registrant shall complete at least thirty hours of continuing professional development during the two-year period immediately preceding the biennial renewal expiration date.

(B) The continuing professional development requirement may be satisfied by coursework or activities dealing with technical, ethical, or managerial topics relevant to the practice of engineering or surveying.

A registrant may earn continuing professional development hours by completing or teaching university or college level coursework, attending seminars, workshops, or conferences, authoring relevant published papers, articles, or books, receiving patent awards, or actively participating in professional or technical societies serving the engineering or surveying professions.

Credit for university or college level coursework shall be based on the credit established by the university or college. One semester hour as established by the university or college shall be the equivalent of forty-five hours of continuing professional development, and one quarter hour as established by the university or college shall be the equivalent of thirty hours of continuing professional development.

Credit for seminars, workshops, or conferences offering continuing education units shall be based on the units awarded by the organization presenting the seminar, workshop, or conference. A registrant may earn ten continuing professional development hours for each continuing education unit awarded. Each hour of attendance at a seminar, workshop, or conference for which no continuing education units are offered shall be the equivalent of one continuing professional development hour.

A registrant may earn two continuing professional development hours for each year of service as an officer or active committee member of a professional or technical society or association that represents registrants or entities composed of registrants. A registrant may earn ten continuing professional development hours for authoring relevant published papers, articles, or books. A registrant may earn ten continuing professional development hours for each such published paper, article, or book. A registrant may earn ten continuing professional development hours for each patent award.

(C) (1) A person registered as both a professional engineer and professional surveyor shall complete at least ten of the thirty hours required under division (A) of this section in engineering-related coursework or activities and at least ten of those thirty hours in surveying-related coursework or activities.

(2) Beginning with registrations expiring on or after the last day of December 2017, a person registered as a professional engineer or professional surveyor shall complete at least two of the thirty hours required under division (A) of this section on professional ethics or rules relevant to the practices of engineering or surveying.

(D) A registrant is exempt from the continuing professional development requirements of this section during the first calendar year of registration.

(E) (1) A registrant who completes more than thirty hours of approved coursework or activities in a biennial renewal period may carry forward to the next biennial renewal period a maximum of fifteen of the excess hours.

(2) A person registered as a professional engineer or professional surveyor may carry forward up to two hours on professional ethics or rules earned in excess of the requirement under division (C) (2) of this section as part of the fifteen-hour maximum.

(F) A registrant shall maintain records to demonstrate completion of the continuing professional development requirements specified in this section for a period of four calendar years beyond the year in which certification of the completion of the requirements is obtained by the registrant. The records shall include all of the following:

(1) A log specifying the type of coursework or activity, its location and duration along with the instructor's name, and the number of continuing professional development hours earned;

(2) Certificates of completion or other evidence verifying attendance.

(G) The records specified in division (F) of this section may be audited at any time by the state board of registration for professional engineers and surveyors. If the board discovers that a registrant has failed to complete coursework or activities, it shall notify the registrant of the deficiencies and allow the registrant six months from the date of the notice to rectify the deficiencies and to provide the board with evidence of satisfactory completion of the continuing professional development requirements. If the registrant fails to provide such evidence within that six-month period, the board may revoke or suspend the registration after offering an adjudication hearing in accordance with Chapter 119. of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 236, §1, eff. 4/6/2017.

Amended by 130th General Assembly File No. 70, HB 202, §1, eff. 6/3/2014.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 6/30/2011
Effective 05-18-2005

4733.161 Unauthorized practice prohibited

(A) Notwithstanding any other provision of this chapter, any person who performs labor or who provides services pursuant to a construction contract may offer or provide engineering services in connection with the person's own labor or services if all of the following apply:

(1) The engineering services are provided and performed by an engineer registered under this chapter or by a firm holding a certificate of authorization granted pursuant to this chapter through either direct employment or independent contract with the person contracting with the owner and offering the services.

(2) The engineering services are offered by the person who intends to perform the actual construction of an improvement to real property as part of a design-build contract.

(3) The contractor, the engineer registered under this chapter, or the firm holding a certificate of authorization granted pursuant to this chapter meets the requirements of section 153.70 of the Revised Code when design-build services are provided to a public authority as defined in section 153.65 of the Revised Code.

(B) Except as otherwise provided in this section, no person shall offer or engage in the practice of engineering without a certificate of authorization for any 25 construction contract that is to be constructed by another person, or hold himself or herself out to the public as engaging in the practice of engineering or as providing engineering services without a certificate of authorization.

(C) As used in this section, "construction contract" and "design-build" have the same meaning as in section 4703.182 of the Revised Code.

Effective 11-24-1995.

4733.20 Disciplinary actions.

(A) Pursuant to this section, the state board of registration for professional engineers and surveyors may fine, revoke, suspend, refuse to renew, or limit the registration, or reprimand, place on probation, deny an applicant the opportunity to sit for an examination or to have an examination scored, or impose any combination of these disciplinary measures on any applicant or registrant, or revoke the certificate of authorization of any holder found to be or to have been engaged in any one or more of the following acts or practices:

- (1) Any fraud or deceit in obtaining registration or a certificate of authorization;
- (2) Any gross negligence, incompetency, or misconduct in the practice of professional engineering or professional surveying as a registered professional engineer or registered professional surveyor;
- (3) Aiding or abetting any person to practice professional engineering or professional surveying illegally in the state;
- (4) Conviction of or plea of guilty to any felony or crime involving moral turpitude;
- (5) Violation of this chapter or any rule adopted by the board;
- (6) Violation of any condition of limitation placed by the board upon the registration of any professional engineer or professional surveyor;
- (7) Failure to abide by or comply with examination instructions.

(B) The board shall cause to have prepared and shall adopt a code of ethics, which it shall make known to every registrant. The board may revise and amend this code of ethics from time to time in accordance with Chapter 119. of the Revised Code.

(C) Any person may file with the board a complaint alleging fraud, deceit, gross negligence, incompetency, misconduct, or violation of this chapter or any rule adopted by the board pursuant to section 4733.07 of the Revised Code. Complaints shall be in writing.

(D) The board may investigate any registrant or holder of a certificate of authorization to determine whether the registrant or certificate holder is or has been engaged in any one or more of the acts or practices listed in division (A) of this section. The board, by subpoena, may compel witnesses to appear and testify in relation to any investigation under this chapter and may require, by subpoena duces tecum, the production and copying of any book, paper, or document pertaining to an investigation. If a person fails to comply with the subpoena or subpoena duces tecum, the board may apply to the Franklin county court of common pleas for an order compelling the person to comply or, for the failure to do so, to be held in contempt of court.

(E) If the board determines there is cause to believe that an applicant, registrant, or a holder of a certificate of authorization is or has been engaged in any act or practice listed in division (A) of this section, the board shall issue a written charge and notify the applicant, registrant, or certificate holder of the right to an adjudication hearing, in accordance with Chapter 119. of the Revised Code. If the accused applicant, registrant, or holder of a certificate of authorization fails or refuses to appear, or does not request a hearing within the time period specified in Chapter 119. of the Revised Code, the board may determine the

validity of the charge and issue an adjudication order in accordance with Chapter 119. of the Revised Code.

(F) If a majority of the board votes in favor of sustaining the charge, the board shall impose one or any combination of the following disciplinary measures:

(1) Reprimanding the individual;

(2) Imposing a fine on the individual of not more than one thousand dollars for each offense committed by the individual;

(3) Refusing to renew, suspending, or revoking the individual's registration, or revoking the holder's certificate of authorization;

(4) Refusing to allow an applicant to take an examination;

(5) Refusing to score an applicant's examination. The board, for good cause shown, may reregister any person or reissue a certificate of authorization to any corporation, firm, partnership, association, or limited liability company whose registration or certificate has been revoked or suspended.

(G) Any applicant, registrant, or certificate holder aggrieved by any action of the board in fining the registrant or denying, suspending, refusing to renew, or revoking the registrant's registration or a certificate of authorization, or denying an applicant the opportunity to take an examination or to have an examination scored may appeal such action to the proper court under section 119.12 of the Revised Code.

(H) A new certificate of authorization to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board, upon payment of a fee established by the board at an amount adequate to cover the expense of issuing a duplicate certificate of authorization.

Effective 08-06-2002.

4733.22 Prohibited acts

No person shall practice, or offer to practice, the profession of engineering or the profession of surveying without being registered or exempted in accordance with this chapter, or present or attempt to use as the person's own the registration, the certificate of authorization, or the seal of another, or give any false or forged evidence of any kind to the state board of registration for professional engineers and surveyors or to any member thereof in obtaining registration or a certificate of authorization, or falsely impersonate any other registrant or holder of a certificate of authorization of like or different name, or attempt to use an expired, suspended, or revoked registration or certificate of authorization, or otherwise violate this chapter.

Effective 08-06-2002.

4733.23 Injunctions

Except as otherwise provided in divisions (B), (C), and (D) of section 4733.18 of the Revised Code, no public authority, as defined in division (A) of section 153.65 of the Revised Code, shall accept or use any engineering or surveying plan prepared by any person not registered as a professional engineer or professional surveyor under this chapter. The state board of registration for professional engineers and surveyors is hereby authorized to apply for relief by injunction or restraining order to enjoin or restrain a person from the commission of any act which is prohibited by this chapter. The remedy provided by this section shall be in addition to any other remedy provided by law. The attorney general or the attorney general's designated assistant shall act as legal adviser of the board and render such legal assistance as may be necessary.

Effective 08-06-2002.

Chapter 3

Ohio A.C. Chapter 4733 (Rules)

Chapter 4733: Engineer and Surveyors Board Rules

The following are excerpts from Chapter 4733 of the Ohio Administrative Code. If you wish to review the entire chapter, please visit the website of the Ohio Board at:

<https://codes.ohio.gov/ohio-administrative-code/4733>

4733-23-01 Registrant's seal

(A) Each registrant may upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Registered Professional Engineer," or "Registered Professional Surveyor." Plans, specifications, plats, reports and all other engineering or surveying work product issued by a registrant shall be stamped with the said seal and be signed and dated by the registrant, or bear a computer-generated seal and electronic signature and date. No person shall stamp or seal any document with said seal after the certificate of the registrant named thereon has expired, or suspended, or has been revoked, unless said certificate of registration shall have been renewed or reissued.

(B) Each registrant is charged with the safeguarding of their personal seal.

(C) By affixing their seal to any document, the registrant certifies to the accuracy and completeness of the information contained in the sealed document, and by such action, assumes full responsibility thereof.

(D) Plans, specifications, plats, reports and all other engineering or surveying work product bearing a computer-generated seal and electronic signature and date shall have an electronic authentication process attached to or logically associated with the electronic document. The electronic signature must be unique to the person using it; capable of verification; under the sole control of the person using it; linked to a document in such a manner that the electronic signature is invalidated if any data in the document is changed.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.14

Prior Effective Dates: 04/15/1985; 03/18/1989; 11/01/03; 11/24/2008

4733-35 Code of Ethics for Engineers and Surveyors

4733-35-01 Preamble.

In order to safeguard the life, health, property and welfare of the public and the state of Ohio, to maintain integrity and high standards of skills and practice in the professions of engineering and surveying, the following rules of professional conduct, promulgated in accordance with Chapter 4733. of the Revised Code, shall be binding upon every person holding a certificate of registration as a professional engineer or as a professional surveyor.

The engineer or surveyor, who holds a certificate of registration from the Ohio state board of registration for professional engineers and surveyors, is charged with having knowledge of the existence of the reasonable rules and regulations hereinafter provided for his or her professional conduct as an engineer or surveyor, and also shall be deemed to be familiar with their several provisions and to understand them. Such knowledge shall encompass the understanding that the practice of engineering, or of surveying, is a privilege, as opposed to a right, and the registrant shall be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/01/1970; 11/01/2003; 11/24/2008

4733-35-02 Integrity.

The engineer or surveyor is obligated to act with complete integrity in professional matters for each client or employer as a faithful agent; shall be honest and impartial, and shall serve the public, client and employer with devotion.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/01/1970; 11/01/2003

4733-35-03 Responsibility to the public.

The engineer or surveyor shall:

(A) Protect the safety, health and welfare of the public in the performance of professional duties. Should the case arise where the engineer or surveyor faces a situation where the safety, health and welfare of the public is not protected, the engineer or surveyor shall:

- (1) Sever the relationship with the employer or client;
- (2) Refuse to accept responsibility for the design, report or statement involved;
- (3) Notify the proper authority if, in his or her opinion, the situation is sufficiently important.

(B) Undertake to perform assignments only when the registrant's consulting support are qualified by training and experience in the specific technical fields involved. In the event a

question arises as to the competence of an engineer or surveyor to perform an engineering or surveying assignment in a specific technical field of engineering or surveying which cannot be otherwise resolved to the board's satisfaction, the board, either upon request of the engineer or surveyor or by its own volition, may require the engineer or surveyor to submit to an appropriate inquiry by or on behalf of the board;

(C) Be completely objective in any professional report, statement or testimony and shall include all relevant and pertinent information in the report, statement or testimony when the result of omission would, or reasonably could, lead to a fallacious conclusion;

(D) Express an opinion as a technical or expert witness before any court, commission or other tribunal, only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his or her testimony.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 11/01/2003

4733-35-04 Public statements and certifications.

(A) The engineer or surveyor will issue no statements, criticisms or arguments on engineering or surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the engineer or surveyor has prefaced his or her remarks by explicitly identifying himself or herself, by disclosing the identities of the party, or parties, on whose behalf the engineer or surveyor is speaking, and by revealing the existence of any pecuniary interest he or she may have in the instant matters.

(B) The engineer or surveyor will publicly express no opinion on an engineering or surveying subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his or her testimony.

(C) The engineer or surveyor shall decline to sign and/or seal any form of certification, warranty, or guaranty that

(1) Relates to matters beyond his or her technical competence,

(2) Involves matters which are beyond the scope of services for which he or she was retained, or

(3) Relates to engineering or surveying work for which he or she does not have personal professional knowledge and direct supervisory control and responsibility.

"Certification" shall mean a statement signed and/or sealed by an engineer or surveyor representing that the engineering or surveying services addressed therein have been performed, according to the engineer or surveyor's knowledge, information and belief, in accordance with commonly accepted procedures consistent with applicable standards of practice, and is not a guaranty or warranty, either expressed or implied.

Effective date: 08/01/2014

R.C. 119.032 review dates: 05/09/2014 and 08/01/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 05/01/1995; 11/01/2003; 11/24/2008

4733-35-05 Conflict of interest.

(A) The engineer or surveyor shall conscientiously avoid conflict of interest with the employer or client, but, when unavoidable, the engineer or surveyor shall forthwith disclose the circumstances to the employer or client.

(B) The engineer or surveyor shall promptly inform the client or employer of any business association, interests, or circumstances which could influence his or her judgment or the quality of services to the client or employer.

(C) The engineer or surveyor 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 to, and agreed to, by all interested parties or their duly authorized agents.

(D) The engineer or surveyor shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.

(E) The engineer or surveyor shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents or other parties dealing with his client or employer in connection with work for which he or she is responsible.

(F) As an elected, retained or employed public official, an engineer or a Surveyor (in the capacity as a public official) shall not review or approve work that was performed by himself, or under his direction, on behalf of another employer or client.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 11/01/2003

4733-35-06 Solicitation of employment.

(A) The engineer or surveyor shall not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of payment of the usual commission for securing salaried positions through licensed employment agencies.

(B) The engineer or surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work.

(C) The engineer or surveyor shall not falsify or permit misrepresentation of academic or professional qualifications and shall not misrepresent or exaggerate the degree of responsibility in or for the subject matter of prior assignments.

(D) Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint-ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 11/01/1978; 11/01/2003; 11/24/2008

4733-35-07 Improper conduct.

(A) The engineer or surveyor shall not sign and/or seal professional work for which he or she does not have personal professional knowledge and direct supervisory control and responsibility. This is interpreted by the board to mean that an engineer or surveyor shall not sign and/or seal professional work unless that work was prepared under his/her supervision and direction. The engineer or surveyor shall be involved in the project and must be closely involved in the preparation of the work product.

(B) The engineer or surveyor shall not knowingly associate with, or permit the use of his or her name or firm name in, a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.

(C) If the engineer or surveyor has knowledge or reason to believe that another person or firm is guilty of violating any of the provisions of Chapter 4733. of the Revised Code, or any of these rules of professional conduct, he or she shall present this information to the board in writing.

(D) If a professional engineer or professional surveyor is found guilty of a felony or had his or her registration revoked or suspended by another jurisdiction, the professional engineer or professional surveyor shall notify the board in writing within sixty days.

R.C. 119.032 review dates: 08/18/2008, 11/24/2013, 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 11/01/2003; 11/24/2008

4733-35-08 Other jurisdiction.

Conviction of a felony without restoration of civil rights, or the revocation, voluntary surrender, or suspension of a professional engineer's or surveyor's license by another jurisdiction, if for a cause which in the state of Ohio would constitute a violation of Ohio Revised Code Chapter 4733 or of these rules, shall be grounds for a charge of violation of these rules.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 11/01/2003

4733-35-09 Records.

Each registrant or certificate of authorization holder shall keep a true and correct record in the English language of all of the business transactions in the registrant's or holder's office relevant to enforcement of Chapter 4733. of the Revised Code. Such records shall be available at all reasonable hours for inspection and copying by the Ohio state board of registration for professional engineers and surveyors.

Each registrant or licensee shall cooperate with the board in its investigation of complaints or possible violations of Chapter 4733. of the Revised Code. This cooperation shall include responding timely to written communications from the board, providing information or documents requested within thirty days of the date on which the communication was mailed, and appearing before the board or its designee upon request.

R.C. 119.032 review dates: 05/09/2014 and 05/09/2019

Promulgated Under: R.C. 119.03

Statutory Authority: R.C. 4733.07

Rule Amplifies: R.C. 4733.20

Prior Effective Dates: 10/15/1970; 11/01/2003; 11/24/2008

Chapter 4

Disciplinary Process

Filing a Complaint

Anyone may file a complaint. Board policy is that all complaints must be made in writing and should contain sufficient factual evidence to indicate a clear violation of the registration law. The complaint should include as much factual evidence as possible; such as copies of plans, plats, pictures, maps, documents, contracts and the names, addresses and phone numbers of potential witnesses. Any documents received with the complaint will not be returned. Most documents received by the Board are public records and subject to Ohio's Public Records Act. This law requires nearly all public records to be available for inspection by anyone, upon reasonable request.

Investigative Process

After a complaint is filed, the Board issues a written confirmation to the complainant that the complaint was received. The complaint is reviewed by the Board enforcement staff to determine if further investigation is required. The respondent is often sent a copy of the complaint and given 20 days to respond to the allegation. If the respondent is unwilling to cooperate or the allegation requires the Board attention, the complaint is presented to the Board and a formal investigation is opened. Once a formal investigation is opened, the enforcement staff proceeds to gather all relevant information and conduct interviews of the witnesses.

Charges and Hearings

When the investigation is completed, the enforcement staff reviews the data to determine if charges should be filed with the Board Secretary. If charges are filed, the Board reviews the charge and may prefer formal charges against the respondent and issue a Charge and Notice of Opportunity for Hearing. If a hearing is not requested, the Board reviews the evidence and decides on a appropriate disciplinary action and issues a Final Order.

If a hearing is requested, a hearing is scheduled before a Hearing Officer. After hearing the evidence, the Hearing Officer issues a Report and Recommendations to the Board. The Board reviews the Hearing Officer Report and Recommendations and either accepts, rejects or modifies the Report and Recommendations. The Board then decides on the appropriate disciplinary action and issues a Final Order.

Disciplinary Action

Disciplinary action taken against registrants may include settlement agreement, reprimand, probation, limitation on registration, fine, suspension, revocation or any combination, thereof.

Final Order

The Board's Final Orders can be appealed to the Court of Common Pleas and subsequent appeals can be made to the Court of Appeals and the Ohio Supreme Court. The Board does not have jurisdiction over unlicensed persons practicing engineering or surveying, and therefore cannot take disciplinary action against them. However, after an investigation, the Board may seek a settlement agreement, an injunction or criminal prosecution to prohibit further unlicensed activity.

Chapter 5

Review of Disciplinary Cases

The following disciplinary cases were extracted from the minutes of the regular meeting of the Ohio state board of registration for professional engineers and surveyors held on May 16, 2023. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Ohio Board.

CASE No. 22-140

VIOLATION: Sections 4733.20(A)(2) and (5), and Rule 4733-35-07(D) and 4733-35-08

Case Review

During a routine review of the NCEES Enforcement Exchange, it was reported that the North Carolina Board of Examiners for Engineers and Surveyors (NC Board) issued a Decision and Order to the licensee on April 13, 2022. The North Carolina Board order revoked the licensee's professional engineer registration for failing to report disciplinary actions taken by other boards within thirty days as required, and for failing to respond and cooperate with the North Carolina Board's investigation of the licensee's failure to report the disciplines. The licensee did not report the North Carolina Board revocation to this Board within sixty days as required.

According to NCEES, the licensee was also subject to the following disciplinary actions:

1. Oklahoma Board for Professional Engineers and Land Surveyors on May 20, 2021, for failing to submit a permanent PE application within 30 days after the Board issued SUBJECT PE a temporary license. SUBJECT PE was fined and reprimanded.
2. Florida Board of Professional Engineer's on August 20, 2021, for submitting deficient electrical and mechanical design documents for a Florida project in 2019. SUBJECT PE agreed to pay a fine, complete an educational course, and agreed to a permanent restriction from providing services in electrical power and mechanical HVAC.

Applicability of the Violation to the Ohio Laws and Rules

On January 17, 2023, the Board reviewed the matter and voted to charge the licensee with violations of Ohio Revised Code Sections 4733.20(A)(2) and (5), and Ohio Administrative Code Sections 4733-35-07(D) and 4733-35-08 for having his professional engineer registration revoked by the North Carolina Board for a cause which in the state of Ohio would constitute a violation of Ohio Revised Code Chapter 4733, and for failing to report the North Carolina Board disciplinary action to this Board within sixty days as required.

Board Ruling

On April 28, 2023, the Board received a signed settlement agreement wherein the licensee agreed to pay a \$1000.00 fine, accept a public reprimand, and to comply with the laws and rules governing the practice of engineering and surveying in Ohio.

Action requested

Approve the settlement agreement and close the investigation.

ACTION

The motion passed as part of the consent agenda.

CASE No. 23-111

VIOLATION: Sections 4733.20(A)(1) and 4733.22

Case Review

On February 8, 2023, the Board received a New License Application from the licensee. On the application, SUBJECT answered "NO" to the question, *"Have you had any disciplinary action involving a professional or vocational license(s), or registration, or had an application denied in Ohio or another U.S. state or jurisdiction?"*

On February 13, 2023, the Board's enforcement staff performed a check of the NCEES Enforcement Exchange and found that the licensee and his firm had received disciplinary action from the West Virginia State Board of Registration for Professional Engineers on September 20, 2006.

According to the West Virginia Board's consent order, the West Virginia Board found that the licensee and his firm advertised to provide engineering services in West Virginia at a time when neither the licensee nor his firm were licensed in WV. The sanctions imposed by the West Virginia Board included a \$200.00 dollar fine and the fees for the cost of the investigation.

Applicability of the Violation to the Ohio Laws and Rules

On March 28, 2023, the Board reviewed the matter and voted to charge the licensee with violations of Ohio Revised Code Sections 4733.20(A)(1) and 4733.22 by failing to report prior disciplinary action as required when submitting a professional engineer application to this Board.

Board Ruling

On May 2, 2023, the Board received a signed settlement agreement wherein the licensee agreed to pay a \$1000.00 fine and to comply with the laws and rules governing the practice of engineering and surveying in Ohio.

Action requested

Approve the settlement agreement and close the investigation.

ACTION

The motion passed as part of the consent agenda.

CASE No. 23-116

VIOLATION: Sections 4733.20(A)(1) and 4733.22

Case Review

On February 8, 2023, the Board received a late 2022-2023 certificate of authorization (COA) renewal application from SUBJECT FIRM. SUBJECT FIRM provided engineering services in Ohio after their Ohio COA had expired on July 1, 2022. The firm provided engineering on at least one project in Ohio while the firm's COA was expired.

Applicability of the Violation to the Ohio Laws and Rules

On March 28, 2023, the Board reviewed the matter and voted to charge SUBJECT FIRM with violations of Ohio Revised Code Sections 4733.16 and 4733.22 for continuing to offer and provide engineering services in Ohio while the firm's COA was inactive.

Board Ruling

On March 31, 2023, the Board issued the Charge and Notice for Opportunity for Hearing to SUBJECT PE by certified mail. On April 18, 2023, the Board received a signed certified receipt indicating that SUBJECT FIRM received the Charge and Notice of Opportunity for Hearing. SUBJECT FIRM did not request a hearing within thirty days as required.

Action requested

Motion to accept the settlement agreement, approve the COA application and close the investigation

ACTION

Motion carried.

Appendix A

References

Ohio State Board of Registration for Professional Engineers and Surveyors
<http://www.peps.ohio.gov/>

Ohio Revised Code (Laws)
<https://codes.ohio.gov/ohio-revised-code/chapter-4733>

Ohio Administrative Code (Rules)
<https://codes.ohio.gov/ohio-administrative-code/4733>

Enforcement/How to File a Complaint
<https://peps.ohio.gov/about/complaint-and-enforcement>

Ohio State Board May 2023 Meeting Minutes
<https://peps.ohio.gov/about/board-meeting-minutes/may-2023-meeting-minutes>