

Disclosure of Personal Information

Case No. 19-1

Facts:

Engineer A, a professional engineer licensed in four states, specializes in air pollution control and air emissions permitting and has practiced professional engineering successfully for 25 years for multiple employers. Engineer A has autism and, more specifically, Asperger’s Syndrome. Engineer A has kept this fact not only from his current employer (which he has worked for 5 years) but also previous employers.

Engineer A recently attended an autism support conference. One of the speakers presented on self-advocacy, which encourages autistic individuals, when able, to share who they are and what they can do. The speaker noted that a person with autism needs to be treated with respect and not as someone with “special needs.”

After considerable thought, Engineer A considered the language in the NSPE Code of Ethics, which requires engineers to “avoid deceptive acts.” Engineer A would like to be open about his autism, but because Engineer A obtained his employment without disclosing his autism, Engineer A is concerned that doing so might place his career in jeopardy. At the least, disclosure could limit his career options if his employer and potential future employers have biases or concerns about client interactions.

Question:

What are Engineer A’s ethical obligations under the circumstances?

NSPE Code of Ethics References:

Section I.5. - *Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*

Section I.6. *Engineers, in the fulfillment of their professional duties shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*

Section III.1.f. - *Engineers shall treat all persons with dignity, respect, fairness and without discrimination.*

NSPE BER Case References: [75-5](#), [97-11](#), [03-6](#)

Discussion:

As the Board has stated on numerous occasions, the obligation to provide full and complete disclosure to employers or clients is a critical one for professional engineers. The scope of this obligation is sometimes subject to examination depending on the issues involved and other factors.

Previous Board of Ethical Review cases provide some background for considering this case. The first is [BER Case 97-11](#), in which Engineer A was retained by Client B to perform design services and provide a critical path method schedule for a manufacturing facility. Engineer A prepared the plans, specifications, and the CPM schedule. During the rendering of services to Client B, the state board of professional engineers contacted Engineer A about an ethics complaint filed against Engineer A. The complaint was filed by Client C relating to services provided on a project for Client C that were similar to the services being performed for Client B. Client C alleged that Engineer A lacked the competence to perform the services in question. Engineer A did not believe it was necessary to notify Client B of the pending complaint. Later, through another party, Client B learned of the ethics complaint filed against Engineer A and told Engineer A that he was upset by the allegations and that Engineer A should have brought the matter to Client B's attention.

The Board found that it was ethical for Engineer A not to report to Client B the ethics complaint filed against Engineer A by Client C. In its decision, the Board noted that while an engineer clearly has an ethical obligation to act as a faithful agent and trustee for the benefit of a client, avoid deceptive acts, be objective and truthful, avoid conflicts, etc., such obligations would not compel an engineer to automatically disclose that a complaint had been filed against the engineer with the state engineering licensure board. As the Board explained, a complaint is a mere allegation and does not amount to a finding of fact or conclusion of law. Said the Board, “No engineer should be compelled to disclose potentially damaging allegations about his professional practice—allegations that could be false, baseless, and motivated by some malicious intent. Instead, Engineer A should weigh all factors and, depending upon the nature and seriousness of the charges, take prudent action, which might include providing Client B with appropriate background information.”

The Board also clarified that it believed that Engineer A should have weighed providing Client B with some limited background information in a dispassionate and nonprejudicial matter for the benefit of all concerned, although it was not suggesting that Engineer A had an ethical obligation to report to Client B the ethics complaint filed against him. By providing Client B with some limited background information, Engineer A would be providing Client B with early notice of the pending matter so that Client B would be able to respond to comments or questions by third parties. This action would demonstrate to Client B that Engineer A was acting in a professional and responsible manner and had nothing to hide or fear concerning the complaint.

In another case, [BER Case 75-5](#), the Board found that personal misconduct unrelated to the practice of engineering was a violation of the NSPE Code of Ethics. In this case, the BER said, “It may be argued that a code of ethics of any profession is only intended to relate to conduct which prejudices or may tend to prejudice the performance of professional services, and accordingly personal misconduct unrelated to such performance should be left to other proper authority. But counter to this approach should be a recognition that the basic purpose of a code of ethics is to so regulate and direct the activities of professional practitioners that the public they serve may have confidence in their integrity, honesty, and

decorous behavior. Thus, it is intended that the NSPE Code embraces language found in the codes of other professions to the effect (that Engineers shall avoid deceptive acts).” The BER further stated in [Case 75-5](#): “We are therefore of the view, and are now prepared to state, that personal misconduct of the kind indicated in this case is subject to the Code of Ethics and may be dealt with accordingly under the code in addition to whatever action may be appropriate by legal authorities.”

A more recent examination of deception can be found in [BER Case 03-6](#). There, Engineer F was a professional engineer and applied for a professional engineering position with an engineering firm. Previously, Engineer F was the owner of a fire sprinkler contracting firm, which was required to have a contractor’s license. On the engineering firm employment application, a question asks whether the engineer “has ever been disciplined in the practice of professional engineering or had his license suspended or revoked?” Engineer F responded in the negative on the employment application. Later, the engineering firm learned that while Engineer F’s engineering license was never revoked or suspended, Engineer F’s contractor’s license was revoked because he had allowed an unlicensed individual who was unrelated to his contracting firm to use the contractor license number on another project. In this case, the Board of Ethical Review determined that Engineer F had an ethical obligation to report on the employment application the revocation of his contractor’s license. The Board reasoned that while it may have appeared that the employer was seeking information about Engineer F’s practice of engineering, it should have been equally clear to Engineer F that the employer’s questions sought to elicit information concerning Engineer F’s character, integrity, and credibility as a professional engineer.

Turning to the facts in the present case, the Board finds a clear distinction between the earlier BER cases examining the deception issue and the present case. The facts of the earlier cases indicate an effort to conceal conduct on the part of the individual or associates relating to the practice of engineering or related fields. In contrast, the facts of the present case demonstrate no effort to conceal any conduct relating to the practice of engineering or related fields. Instead, the facts relate to a personal condition with little if any apparent impact on the individual’s ability to successfully practice engineering. The facts indicate that Engineer A functioned as a professional engineer and had a successful professional career, practicing competently, as required by the NSPE Code of Ethics. Nonetheless, Engineer A perceived the potential for bias on the part of Engineer A’s employer and clients despite the fact that Engineer A’s condition is clearly protected under the Americans with Disabilities Act (ADA). This demonstrates the relevance of the newest addition to the NSPE Code of Ethics Section III.1.f.: “Engineers shall treat all persons with dignity, respect, fairness, and without discrimination.”

In sum, the essence of this case is more a personal matter than an ethical matter. Engineer A certainly has the right to advocate for himself at his sole discretion. At the same time, Engineer A has a personal right to privacy and, for whatever reason, the right to not communicate aspects of his condition that do not appear to affect his ability to practice engineering. The extent of one’s legitimate right to privacy cannot be measured by language in the NSPE Code of Ethics relating to the “avoidance of deception.” To do so would give an unintended and far too broad meaning to the NSPE Code of Ethics.

Conclusion:

Engineer A is certainly free to disclose his autism if he so chooses. However, the NSPE Code of Ethics does not compel disclosure nor does a failure to disclose somehow constitutes a “deception.”

Board of Ethical Review:

Vincent P. Drnevich, Ph.D., P.E., F.NSPE
Mark H. Dubbin, P.E., LEED AP
Jeffrey H. Greenfield, Ph.D., P.E., F.NSPE
Kenneth L. McGowan, P.E., F.NSPE
Craig N. Musselman, P.E., F.NSPE
Hugh Veit, P.E.
Susan K. Sprague, P.E., F.NSPE (Chair)

NOTE: The NSPE Board of Ethical Review considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials, and members of the public. The BER reviews each case in the context of the NSPE Code of Ethics and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code of Ethics to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

This opinion is for educational purposes only. It may be reprinted without further permission, provided that this statement is included before or after the text of the case and appropriate attribution is provided to the National Society of Professional Engineers' Board of Ethical Review.

To obtain additional NSPE opinions, visit www.nspe.org or call 888-285-6773.