

Section I.1.	- Code of Ethics
Section II.1.a.	- Code of Ethics
Section II.1.c.	- Code of Ethics
Section II.1.e.	- Code of Ethics
Section II.4.	- Code of Ethics
Section III.4.	- Code of Ethics

### DUTY TO REPORT SAFETY VIOLATIONS

#### FACTS:

Engineer A is retained to investigate the structural integrity of a 60-year old occupied apartment building which his client is planning to sell. Under the terms of the agreement with the client, the structural report written by Engineer A is to remain confidential. In addition, the client makes clear to Engineer A that the building is being sold "as is" and he is not planning to take any remedial action to repair or renovate any system within the building prior to its sale.

Engineer A performs several structural tests on the building and determines that the building is structurally sound. However, during the course of providing services, the client confides in Engineer A and informs him that the building contains deficiencies in the electrical and mechanical systems which violate applicable codes and standards. While Engineer A is not an electrical nor mechanical engineer, he does realize those deficiencies could cause injury to the occupants of the building and so informs the client.

In his report, Engineer A makes a brief mention of his conversation with the client concerning the deficiencies; however, in view of the terms of the agreement, Engineer A does not report the safety violations to any third party.

#### QUESTION:

Was it ethical for Engineer A not to report the safety violations to the appropriate public authorities?

#### REFERENCES:

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

Section II.1.a. - Engineers shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.

Section II.1.c. - Engineers shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or this Code.

Section II.1.e. - Engineers having knowledge of any alleged violation of this Code shall cooperate with the proper authorities in furnishing such information or assistance as may be required.

Section II.4. - Engineers shall act in professional matters for each employer or client as faithful agents or trustees.

Section III.4. - Engineers shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without his consent.

#### DISCUSSION:

The facts presented in this case raise a conflict between two basic ethical obligations of an engineer: The obligation of the engineer to be faithful to the client and not to disclose confidential information concerning the business affairs of a client without that client's consent, and the obligation of the engineer to hold paramount the public health and safety.

Section III.4 can be clearly understood to mean that an engineer has an ethical obligation not to disclose confidential information concerning the business affairs of any present client without the consent of that client. That provision makes no specific exception to the language. For example, the drafters of the Code could have provided exceptional circumstances where such confidential information could be disclosed by the engineer; however no such provisions have been included.

There are various rationale for the non-disclosure language contained in the Code. Engineers, in the performance of their professional services, act as "agents" or "trustees" to their clients. They are privy to a great deal of information and background concerning the business affairs of their client. The disclosure of confidential information could be quite detrimental to the interests of their client and therefore engineers as "agents" or "trustees" of such information are expected to maintain the confidential nature of the information revealed to them in the course of rendering their professional services.

On numerous occasions, this Board has interpreted the language contained in Sections II.4. and III.4. particularly in the context of the obligations of employed engineers to maintain the confidences of their employer particularly with regard to certain confidential information which might be made available to the engineer during the course of employment as in Case 61-8. However, more recently, the Board has interpreted this language in the context of the relationships owed by the engineer in private practice to the client.

For example, in Case 82-2, an engineering consultant performed home inspection services for a prospective purchaser of a residence and thereafter disclosed the contents of the report to the real estate firm handling the sale of the residence. The Board reaffirmed the principle of the right of confidentiality on behalf of the client. There we noted that this was not a case of an engineer allegedly violating the mandate of Section III.4. not to disclose information concerning the business affairs of the client. We said that Section III.4. necessarily relates to confidential information given the engineer by the client in the course of providing services to the client. In Case 82-2, there was no transmission of confidential information by the client to the engineer.

However, under the facts of the present case, there was a transmission of confidential information by the client to Engineer A. Therefore, it would appear that Section III.4. should be involved in our consideration of this case.

While we noted earlier that the Code makes no direct exception to the language contained in Section III.4., as we have stated on numerous occasions, no section of the Code should be read in a vacuum or independent of the other provisions of the Code. Section II.1.c. provides additional guidance in this case making it clear that the Engineer A has an ethical obligation to refrain from disclosing information which he acquires during the course of providing professional services to the client unless first obtaining the client's consent to disclose. Importantly, however, this section also includes a relevant exception which allows the engineer to disclose information acquired during the course of providing professional services to the client if such disclosure is authorized or required by law or by the Code. In other words if the engineer has a legal or ethical responsibility to disclose the information in question, the engineer is released from the obligation to maintain confidentiality.

The Board has interpreted Section II.1.c. on three different occasions (Cases 82-2, 85-4, 87-2) but in none of those cases has the Board outlined the scope of the Code section. Based upon previous BER cases, it is not clear which provisions of the law would have to be involved before an engineer is released from the obligation of non-disclosure. Similarly and more importantly, from a review of these cases for our purposes, it is unclear which provisions of the Code of Ethics would apply before an engineer is released from the obligation of non-disclosure.

However, we believe we can draw from another case involving somewhat different facts to illustrate an approach which might be applicable to the case at hand. Case 84-5 involved a client who planned a project and hired an engineer to furnish complete engineering services for the project. Because of the potentially dangerous nature of implementing the design during the construction phase, the engineer recommended that a full-time, on-site project representative be hired for the project. After reviewing the complete project plans and costs, the client indicated to the engineer that the project would be too costly if such a representative were hired. They found it was unethical for the engineer to proceed with his work on the project knowing that the client would not agree to hire a full-time project representative. The Board noted that the engineer acceded to the client's wishes and proceeded with the work despite the fact that the engineer believed that to proceed without an on-site project representative would be potentially dangerous. The engineer did not force the issue or insist that a project representative be hired. Instead, the engineer "went along" without dissent or comment. If the engineer's ethical concerns were real, the engineer should have insisted that the client hire the on-site project representative or refuse to continue to work on the project.

We believe much of the same reasoning applies in the present case. Under the reasoning of Case 84-5, the engineer had an obligation to go further. We believe under the facts, Section II.1.c. should be read in conjunction with Section II.1.a. The latter section refers to the primary obligation of the engineer to protect the safety, health, property and welfare of the public. The obligation of the engineer to refrain from revealing confidential information, data, facts concerning the business affairs of the client without consent of the client is a significant ethical obligation. We further believe that matters of public health and safety must take precedence. The Code of Ethics is clear on this point. Section I.1. employs the word "paramount" to describe the obligation of the engineer with respect to the public health and safety.

We believe Engineer A could have taken other steps to address the situation, not the least of which was his paramount professional obligation to notify the appropriate authority if his professional judgment is overruled under circumstances where the safety of the public is endangered. Instead, Engineer A, like the engineer in Case 84-5, "went along" and proceeded with the work on behalf of the client. His conduct cannot be condoned under the Code.

CONCLUSION:

It was unethical for Engineer A not to report the safety violations to the appropriate public authorities.

BOARD OF ETHICAL REVIEW

Eugene N. Bechamps, P.E.  
John F. X. Browne, P.E.  
Herbert G. Koogle, P.E.-L.S.  
Lindley Manning, P.E.  
Paul E. Pritzker, P.E.  
Harrison Streeter, P.E.

Robert J. Haefeli, P.E., Chairman

**Note:** This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.