

- Section II.1.a. - Code of Ethics
Section II.1.c. - Code of Ethics

FAILURE TO REPORT INFORMATION AFFECTING PUBLIC SAFETY

FACTS:

Tenants of an apartment building sue the owner to force him to repair many defects in the building which affect the quality of use. Owner's attorney hires Engineer A to inspect the building and give expert testimony in support of the owner. Engineer A discovers serious structural defects in the building which he believes constitute an immediate threat to the safety of the tenants. The tenants' suit has not mentioned these safety related defects. Upon reporting the findings to the attorney, Engineer A is told he must maintain this information as confidential as it is part of a lawsuit. Engineer A complys with the request of the attorney.

QUESTION:

Was it ethical for Engineer A to conceal his knowledge of the safety-related defects in view of the fact that it was an attorney who told him he was legally bound to maintain confidentiality?

REFERENCES:

- 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.

DISCUSSION:

The obligation of the engineer to protect the public health and safety has long been acknowledged by the Code of Ethics and by the Board of Ethical Review. This responsibility rests with the recognition that engineers with their education, training and experience possess a level of knowledge and understanding concerning technical matters which is superior to that of the lay public. It also is rooted in the implicit fact that as individuals who are granted a license by the state to practice, engineers have a duty to engage in practice which is consistent with the interests of the state and its citizenry.

This obligation has long been recognized by this board. A good example is BER Case 84-5. There, a client planned a project and hired Engineer A to furnish complete engineering services for a project. Because of the potentially dangerous nature of implementing the design during the construction phase, Engineer A recommended to the client that a full-time, on-site project representative should be hired for the project. After reviewing the completed project plans and costs, the client indicated to Engineer A that the project would be too costly if such a representative were hired.

Engineer A proceeded with the work on the project even though he had recommended that a full-time, on-site project representative should be hired. In discussing the issue of whether it was unethical for Engineer A to proceed with work on the project knowing that the client would not agree to hire a full-time, on-site project representative, the Board noted that Section II.1.a. admonishes engineers to recognize that their primary obligation is to protect the public safety, health, property and welfare. Under the facts, Engineer A did not recognize this primary obligation. Engineer A, using his best professional judgment, made a recommendation consistent with that obligation. However, when costs concerns were raised by the client, Engineer A abandoned the ethical duty and proceeded with the work on the project. The Board concluded that Engineer A appeared to have acted in a manner that suggests that the primary obligation was not to the public but to the client's economic concerns. For that reason, Engineer A was in violation of Section II.1.a. of the Code.

Although the public health and safety clearly is the most basic and fundamental ethical obligation of engineers, other important ethical obligations exist for which engineers must be ever mindful. One important ethical consideration is the obligation of engineers not to reveal information of the client without the prior consent of the client.

The Board has had reason to consider this ethical issue on occasion. In BER Case 82-2, Engineer A offered home inspection services, whereby Engineer A undertook to perform an engineering inspection of residences by prospective purchasers. Following an inspection, Engineer A would render a written report to the prospective purchaser. Engineer A performed this service for a client for a fee and prepared a one-page written report, concluding that the residence was in generally good condition requiring no major repairs, but noting several minor items needing attention.

Engineer A submitted his report to the client showing that a carbon copy was sent to the real estate firm handling the sale of the residence. The client objected that such action prejudiced their interests by lessening their bargaining position with the owners of the residence. They also complained that Engineer A acted unethically in submitting a copy of the report to others who had not been a party to the agreement for the inspection services. In concluding that Engineer A acted unethically in submitting a copy of the home inspection to the real estate firm representing the owner, the Board concluded that although it did not appear from the facts that Engineer A had acted with some ulterior motive or intention to cause the client any harm, the principle of the right of confidentiality on behalf of the client predominated.

Given these two cases, it is clear that there may be facts and circumstances in which the ethical obligation of engineers in protecting the public health and safety conflict with the ethical obligation of engineers to maintain the right of confidentiality in data and other information obtained on behalf of a client. While we recognize that this conflict is a natural tension which exists within the Code, we think that under the facts of this case, there were reasonable alternatives available to Engineer A which could assist him in averting an ethical conflict.

It appears that Engineer A, having become aware of the imminent danger to the structure, had an obligation to make absolutely certain that the tenants and public authorities were made immediately aware of the dangers that existed. Engineer A's client was the attorney and technically Engineer A had an obligation not to reveal facts, data or other information in a professional capacity without the prior consent of attorney. However, there were valid reasons why Engineer A should have revealed the information directly to the tenants and public authorities.

Unlike the facts presented in BER Case 82-2, there is not any conflict or potential conflict of interest that exists between owner and attorney with regard to the information. Although Attorney retained Engineer A directly, he did so on behalf and for the benefit of the owner. Therefore, the key issue in BER Case 82-2 upon which an ethical violation was found, is absent in this case.

Section II.1.c. makes a clear exception concerning the obligation of engineers not to reveal facts obtained in a professional capacity without the client's consent. That exception allows the disclosure of such information in cases authorized by the Code or required by law. We believe that in cases where the public health and safety is endangered, engineers not only have the right but also the ethical responsibility to reveal such facts to the proper persons. We also believe that state board rules of professional conduct might require such action by professional engineers.

CONCLUSION:

It was unethical for Engineer A to not report the information directly to the tenants and public authorities.

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.

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