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Ethics Training
Wisconsin Asphalt Pavement Association
December 2, 2014

Angela A. James and Leah H. Ziembra
Michael Best & Friedrich LLP

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Agenda

- Overview of Applicable Statutes and Regulations
- Disciplinary Process & Penalties
- Examples & Real Life Scenarios

How to Approach Ethical Problems

- We have to distinguish between:
 - *Conventional and Reflective Morality* - Is what we have always done what we ought to do?
 - *Morality and Law* - Just because it is legal, is it right?
 - *Morality and Prudence* - Can we morally do it, just because it is in our best interest?
 - *Morality and Economics* - Is the most economic decision the most moral decision?
 - *Morality and Obedience to Authority* - Is following orders that are not proper a legal or a moral defense?
 - *Morality and Mere Opinion* - Are you obligated to search further for a reason to justify actions than mere opinion?
 - Credit to Texas Tech University, Murdough Center, Ethics Module at <http://www.depts.ttu.edu/murdoughcenter/resources/ethics-modules/index.php>

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Other Codes of Ethics

- American Society of Civil Engineers (ASCE)
- National Society of Professional Engineers (NSPE)

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WI Statute & Administrative Code

- Wis. Stat. Chapter 443 – “Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors”
 - Last updated and published in September 2014
- Wis. Admin. Code, Chapter A-E 1 to 13
 - Last updated and published in June 2014

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What is the “practice of professional engineering”?

- Any professional service requiring the application of engineering principles and data, in which the public welfare or the safeguarding of life, health or property is concerned and involved, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction, alteration, or operation, in connection with any public or private utilities, structures, projects, bridges, plants and buildings, machines, equipment, processes and works. Wis. Stats. ch. 443.01(6)

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The “practice of professional engineering”, cont’d

- “Responsible supervision of construction” means a professional service, as distinguished from superintending of construction, and means of the performance, or the supervision thereof, of reasonable and ordinary on-site observations to determine that the construction is in substantial compliance with the approved drawings, plans and specifications. See. § 443.01(8), Wis. Stats.

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You “offer to practice professional engineering ” if you...

- ... by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a professional engineer; or who through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to practice professional engineering. Wis. Stats. ch. 443.01(6)

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The Examining Board of ... Professional Engineers...

- The “Board” was established to regulate the practice, licensure and registration of professional engineers (and architects, landscape architects, designers and land surveyors) in WI
- Reviews applications, administers exams, licenses qualified applicants and regulates the professional practice of licensees in the state
- Adopts rules, sets standards for licensure and adopts mandatory standards of professional conduct and ethics

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Professional Engineer Section of the Board

PROFESSIONAL ENGINEER SECTION-ROSTER

Board Member	Office	Board Member Type	Term Expiration
Eberle, Joseph W.	Chairperson	Engineer Member	7/1/2017
Hook, Steven J.	Vice Chairperson	Public Member	7/1/2014*
Mayer, Mark E.	Secretary	Engineer Member	7/1/2014*
Cotham, Kristine A.	N/A	Engineer Member	7/1/2017
Vacant	N/A	Public Member	N/A

PROFESSIONAL ENGINEER SECTION - EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND PROFESSIONAL LAND SURVEYORS

The Engineer Section regulates the following professions. Please click on the appropriate link below for further information.

- [Professional Engineer](#)
- [Certificate of Authority - Architectural, Engineering or Designer of Engineering Systems](#)

Executive Director: Brittany Lewin

[Section Roster](#)

Related Board Information

- [Agendas/Meeting Materials](#)
- [Meeting Schedule](#)
- [Minutes](#)
- [Organizations](#)
- [Position Statements](#)
- [Related Statutes and Rules](#)
- [Rulemaking](#)

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The Department of Safety and Professional Services

- DSPS has the authority to promulgate rules defining uniform procedures to be used by DSPS and the Board for:
 - Receiving, filing and investigating complaints
 - Commencing disciplinary proceedings
 - Conducting hearings

Reports of Decisions
Monitoring Forms have moved. [Current Monitoring Reports and Forms](#)
Use the [Report Link](#) on function to search by individual.

Reports of Decisions are published on an ongoing basis following official Agency/Board action and contain orders issued by

Cautionary Note: While every effort has been made to provide complete and accurate information, there may be discrepancy be consulted as the definitive representation of the order's content. Copies of the original order may be obtained by contact

Search By: Board Profession Sort By: Order Date

Board:

Profession: Note: Selecting certain boards with just board membership will automatically include orders from related boards.

Last Name:

First Name:

City Name:

Order Date: to

City:

County:

[Print Results](#)

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WI Administrative Code A-E 1 to A-E 13

- A-E 8.02: Intent
 - "The intent of the examining board in adopting this chapter is to establish rules of professional conduct for the professions of ... professional engineering ... A violation of any standard specified in this chapter may result in disciplinary action under [Chapter 443, Stats.]"

A-E 8.04 – Offers to perform services shall be truthful

Do Be Truthful:

- In representing qualifications & capabilities;
- In representing costs & completion times;

Don't:

- Perform services for which unqualified;
- Use fraudulent or deceptive advertising;
- Represent association with others;
- Collect fees for referrals unless written notice;
- Practice under a firm name that misrepresents the individuals.

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A-E 8.05 Conflicts of Interest

- Must avoid conflicts of interest.
- Must notify employer or client & withdraw if it “becomes apparent that it is not possible to faithfully discharge the responsibilities”
- May not agree to perform services for a client or employer if you have significant financial or other interest which would impair or interfere.
- May not accept payment from someone other than the client or employer, unless approved.
- May not accept anything of value from suppliers in exchange for endorsement;
- May not violate the confidences of a client or employer, unless compelled.

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A-E 8.05 Conflicts of Interest (continued)

- May not perform services for a client or employer while a full-time employee of another employer, without notification.
- Nothing in these rules limits a professional engineer from his or her responsibility to the owner of a project when the professional engineer is employed by a person or firm under contract to construct and furnish design services for that project.

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A-E 8.06 Professional Obligations

- Must use reasonable care and competence in providing professional services.
- May not evade professional or contractual responsibility which the registrant has to a client or employer;
- May not enter into an agreement which provides that a person not legally and actually qualified to perform professional services has control over the registrant's judgment as related to public health, safety & welfare.

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A-E 8.07 Unauthorized practice

- You have an obligation to assist in enforcing laws which prohibit the unlicensed practice of professional engineering.
- You are not allowed to delegate your professional responsibility to an unlicensed person, or otherwise aid or abet the unlicensed practice of professional engineering.

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A-E 8.08 Maintenance of Professional Stds.

- You are required to furnish the Board with any information about the unauthorized practice of professional engineering.
- May not discuss disciplinary measures with Board members;

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A-E 8.08 Maintenance of professional Stds (cont'd)

- Must respond in a timely manner to a request made by the board;
- Must notify the Department in writing if disciplined in another state, or violated any laws or ordinances which are related to the practice of an engineer. This must be filed within 48 hours of the finding or violation of law, and must include documentation necessary to allow the Department to review.

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A-E 8.09 Adherence to statutes and rules.

- Must comply with the requirements of ch. 443, Stats., rules in this chapter, and all federal, state and local codes which relate to the practice of professional engineering.
- May not engage in conduct that may adversely affect his or her "fitness" to practice professional engineering.

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A-E 8.10 Plan stamping

- No professional engineer may sign, seal or stamp any plans, drawings, documents, specifications or reports for professional engineering which are not prepared by him or her, or under his or her personal direction and control.
- No professional engineer may allow work performed under his or her personal direction and control to be signed, sealed, or stamped by anyone else, except that a professional engineer under the direction and control of another professional engineer may still sign.

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Disciplinary Action

- Reprimand, limit, suspend or revoke a certificate of registration if...
 - Fraud or deceit in obtaining a certificate of registration or record
 - Signing or using seal/stamp on documents not prepared by him/her or under his/her control or knowingly permitted the seal/stamp to be used by any other person
 - Knowingly aiding or abetting the unauthorized practice of professional engineering by persons not registered
 - Gross negligence, incompetency or misconduct in the practice of a professional engineer
 - Any violation of rules of professional conduct adopted and promulgated by the section of the examining board
 - Conviction of a felony or adjudication of mental incompetency ²²

Gross negligence, incompetency or misconduct ...

- **Gross negligence**
 - Act that does not comply with acceptable standard of practice that has a significant relationship to the protection of health, safety or public welfare and is performed in a manner indicating that the profession knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice
- **Incompetency**
 - Lack of ability or fitness to discharge the duty owed by a PE to a client, employer or the public
 - Lack of knowledge of the fundamental principles of the profession or an inability to apply fundamental principles
 - Failure to maintain competency in current practices and methods

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Misconduct

- **An act which jeopardizes the interest of the public including,**
 - Violation of federal or state laws, local ordinances or administrative rules relating to professional engineering
 - Deficient plans, drawing maps, specifications or reports
 - Conduct which evidences a lack of trustworthiness to transact business required by the profession
 - Misrepresentation of qualifications such as education, specialized training or experience
 - Wis. Admin. Code A-E § 8.03

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Disciplinary proceedings

- Controlled by the Board
- Complaints may involve unethical conduct, incompetence, unlicensed practice, misrepresentation, plan stamping or other allegations
 - Against an individual and/or a firm, partnership, or corporation holding a certificate of authorization if any agents, employees or officers have committed an act that would authorize a reprimand, limitation, suspension or revocation of a certificate
- Monetary disputes alleging “non-performance” are usually considered to be contractual matters = no Board jurisdiction.
 - Complaint must include sufficient factual evidence to indicate a clear violation of registration law (Wis. Stat. ch. 443)²⁵

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Disciplinary Process

- Any person may file a complaint, in writing, with the Board (Board may do same on its own)
- All charges, unless found to be trivial or unfounded, shall be heard by the engineering section of the Board (5 members)
- After the hearing, if 3 members of the section vote in favor of sustaining charges, the section of the Board shall reprimand, limit, suspend or revoke the application certificate of registration.
- Board’s actions subject to review under ch. 227 of Wis. Stats. (Admin. Procedures & Review)

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Penalties

- Reprimand, limit, suspend or revoke registration
- Not less than \$100 or more than \$500
- Imprisoned for not more than 3 months
- Injunction

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Example # 1 – Does Kansas matter?

- KS Board of Technical Professions notified DSPS that it had taken a disciplinary action against an individual in KS.
- DSPS investigated & found individual performed engineering services in KS without being licensed in the state.
- Does this impact the same individual's WI license status?

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& FRIEDRICH LLP**Example # 1 – Does Kansas matter? YES.**

- Violations in other states = a violation in Wisconsin
- Wis. Admin. Code A-E § 8.08
 - Required to notify DSPS within 48 hours of receiving discipline in any other jurisdiction.
- Outcome
 - Individual voluntarily surrendered his PE license and agreed to not seek a license in WI For 3 years. Will owe cost of investigation if/when he reapplies (\$245).

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- DSPS received a complaint from the PSC of WI concerning engineering services provided by a power company.
- Power company hired PEs to obtain bids for a new transformer, select the winning bid and submit the application to PSC of WI
- Electrical Transformer was installed *before* the PSC of WI rendered a decision on the application.
- Is this an ETHICAL violation?

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Example # 2 – Agency Submissions (an ETHICS problem)

- Yes, this issue was addressed by DSPS
- Power company acknowledged the error and was reprimanded by the PSC of WI.
- PEs
 - Failed to use reasonable care and competence in rendering professional engineering services. (Wis. Admin. Code § A-E 8.06(1))
 - Failed to comply with states codes which relate to the practice of professional engineering (Wis. Admin. Code § A-E 8.03(3)(a)).
 - PEs reprimanded and fined \$815/each

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Example # 2 – Agency Submissions cont'd

- Ethics issue but other issues as well...
 - Power company's standing with PSC of WI
 - Contractual issues between Power company & PEs
 - Indemnity
 - Power company's use of PEs going forward
 - PEs continued appearance on matters before the PSC of WI

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Example # 3 – Political Contributions

- Professional Engineer owns a consulting firm that that works the County. County Chairman requests a campaign contribution to help with her reelection campaign.
- Is it unethical for the engineer to make the contribution?
- Ethical to make the contribution and continue working for the County?

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Are Political Contributions Ethical? It depends!

- Not addressed in the applicable Wisconsin statute or regulations
- Is addressed by the NSPE Code of Ethics
 - Case-by-case basis
 - Nature of office and \$ amount

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Example # 4 – O’Donnell Parking Structure Collapse

- Decorative concrete panel attached to a parking structure falls in Milwaukee. A 15-year-old, Jared Kellner is killed by the fall. 15-year-old Eric Wosinski and his mother, Amy, are both injured.

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Example # 4 – O’Donnell Parking Structure Collapse

Engineer’s Design:

- Stainless-steel pins were threaded up into the underside of the panels upper lip to form a “male” connection, while four steel copes were poured into place in the wall as the female connection.
- Pins were to be grouted into the cups.

Actual Construction:

- Drilled two holes through the top of the panel into the parapet wall, with a piece of rebar driven down each hole.
- When rebar was pounded down into the wall, it “spalled” the concrete.
- This compromised wall caused the fall.

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Example # 4 – O'Donnell Parking Structure Collapse

Installer's Position:

- We received verbal approval from the professional engineer to make the change.

Engineer's Position:

- Did not orally agree to any change.
- Never authorized a change-order, which would be the required method for this type of deviation.

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Example # 4 – O'Donnell Parking Structure Collapse

- Installer submitted as-built drawings did not reflect the drill-in-pound method of connection.
- Conclusion by the jury: installer concealed or misrepresented how the company installed the panels.
- Had the installer properly followed the change-order process, the accident would most likely not have occurred.

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Example # 4 – O'Donnell Parking Structure Collapse

- Jury finding of cause of panel failure:
 - Advance Cast Stone: 88% negligent in the manufacture and/or installation of the panels.
 - J.H. Findorff & Son: 10% negligent in the maintenance of the parking garage.
 - Milwaukee County: 2% negligent in the maintenance of the parking garage.
 - Dietz Engineering: 0% negligent with respect to construction of the garage.

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Example # 4 – O'Donnell Parking Structure Collapse

- Total Awards:
 - \$18,228,871 to the survivors;
 - \$6,000,000 to Milwaukee County;
 - \$15,000,000 Punitive Damages against Advanced Cast Stone (manufacturer & installer)

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Questions?



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Ethics Training

Wisconsin Asphalt Pavement Association

Angela A. James

Senior Counsel

608-283-0106

aajames@michaelbest.com

Leah H. Ziemba

Partner

608-283-4420

lhziemba@michaelbest.com

One South Pinckney Street, Suite 700
Madison, WI 53703-4257
Phone 608.257.3501 Fax 608.283.2275

michaelbest.com