Engineering Ethics Seminar

John Ho, PE  May 15, 2020
Agenda

- Texas Society of Professional Engineers
- TBPELS Continuing Education Review
- TE&LSPA & Policies
- Texas Penal Code 36.08
TBPE Updates

- Texas Board of Professional Engineers and Land Surveyors
- Computer-Based Testing (CBT)
  - Chemical, Environmental, Petroleum
  - Mechanical, 2020
  - Electrical, 2021
  - Civil, 2023
- Seeking Volunteers
- P.E. Ethics Webinar (June 3 – 4, 2020)
Texas Society of Professional Engineers (TSPE)
Promote and enhance the profession and licensed practice of engineering
Licensing Threats

- Over 30 states
  - Oregon — Interior Designers
  - Louisiana — Undermine Licensing Requirements
  - Florida — Eliminate QBS
  - South Carolina — Piping
PE DAY (1st Wednesday in August, 8/5/2020)
Engineers’ Creed?

As a Professional Engineer, I dedicate my professional knowledge and skill to the advancement and betterment of human welfare.
Engineers’ Creed

I pledge:

- To give the utmost of performance;
- To participate in none but honest enterprise;
- To live and work according to the laws of man and the highest standards of professional conduct;
- To place service before profit, the honor and standing of the profession before personal advantage, and the public welfare above all other consideration.

In humility and with need for Divine Guidance,

I make this pledge
What is the NSPE Board of Ethical Review?

- Established in 1950
- Ethical dilemmas
- Reviewed and deliberated
- Written opinions
- Over 650 opinions
NSPE Ethical Reviews

- 05-6  Gifts to DOT Employees
- 92-4  Duty of Government Engineer
- 60-4  Recruiting Engineers
- 14-12 Expressing Professional Opinion without Being Licensed
- 82-5  Whistleblowing
- 15-7  Discussion with Potential Bidding Contractor
- 89-5  Claim Review of Contractor
Continuing Education Program

- 15 PDH with at least 1 hour of ethics annually
- Maximum 5 PDH self-study
- Maximum 3 PDH engineering outreach
- Maximum 5 PDH for serving in Professional Organizations
Who can be exempt from CEP?

- Inactive Status
- Disability
- Deployed Military Service
- 1st renewal after licensure via PE exam
Cannot be exempt

- Over 65
- Not practicing engineering
- Industry exemption
- Retired
What Courses, Presentations or Activities Count?

- PDH units may be earned as follows:
  - Completion or auditing of college credit courses
  - Completion of continuing education courses
  - Completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials
  - Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations
  - Teaching or instructing as listed in items (1)-(4) above
What Courses, Presentations or Activities Count?

- PDH units may be earned as follows:
  - Authoring published papers, articles, books
  - Active participation in professional or technical societies
  - Patents issued
  - Engaging in self-directed study
  - Education outreach activities, K-12 or higher
What Courses, Presentations or Activities Count?

- Two criteria for an activity to count:
  - Is the specific activity on the list of activities in the rule?
  - Is the activity relevant to the practice of a technical profession and does it include technical, ethical, or managerial content?
PDH

- One PDH – minimum 50 minutes of presentation
- Half PDH – minimum 25 minutes of presentation
- *Greetings, announcements do not count*
What is Self-Study?

- **Self-study** is any study, research, reading, etc. that is relevant to the practice of a technical profession and includes technical, ethical, or managerial content.
- Reading up on a new topic, researching a new design, keeping up with current engineering periodicals, or reading about the engineering Act and Board Rules.
How do I get the One Ethics Hour?

- Any coursework, seminars, presentations in the area of professional ethics
- By reviewing the Texas Engineering Practice Act and Board Rules
- TBPELS Quarterly PE Ethics Webinars
  - March, June, September, December
What Proof/Documentation Do I Need?

- Certify on the renewal statement that you have completed the CEP requirement and return it with your renewal payment.
- Keep some sort of paper proof of your activity for at least 3 years:
  - Date
  - Title
  - Presenter
  - Organization
  - Hours
Texas Engineering and Land Surveying Practice Acts
**Events**

**April/June 2020 RPLS, RCP and LSLS Exams**
The exams have been postponed and combined with the October 2020 exams. Refer to our COVID-19 Page for information on these exams and anything else impacted by the pandemic.

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**May 20-21, 2020**
**TBPELS Committee and Board Meetings**
The format of these meetings is to be determined. Check back here for updates.

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**June 3-4, 2020, 10-11 and 2-3 CST PE Ethics Webinars**
The Board is offering these free ethics webinars to assist license holders with meeting their ethics requirement. Each webinar provides an up-to-date overview of agency activities, case studies, and a review of professional ethics topics. Registration is open.

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**Latest News**

**TBPELS Office Closed due to COVID-19 Pandemic**
In order to do our part in the fight against COVID-19, the agency office building located at 1917 S. Interstate 35, Austin, Texas, is closed for the foreseeable future. If you need to drop off paperwork in person, please use the drop box to the right of the front door. Mail is gathered daily. Processing times for any documents submitted, including public information act requests, will be delayed. Staff is teleworking. Send your emails to info@pe.sl.texas.gov. This email is monitored throughout the day during normal work hours. Your message will be routed and responded to by the appropriate department. Refer to this page for all agency operations affected by the COVID-19 Pandemic.
https://engineers.texas.gov/covid19.htm

**Governor Abbott Appoints New Public Board Member**
Governor Greg Abbott has appointed Marguerite "Margo" McClinton Stoglin, Ph.D. to the Board for a term set to expire on September 26, 2025. Press Release

**Request for RPLS Qualifications Needed**
TBPELS is seeking qualifications for up to 3 Registered Professional Land Surveyors (RPLS) to perform technical reviews and analysis of the compliance of surveying and surveying work products with the Board Acts and Rules. Refer to this RFQ document: RFQ_RPLS.pdf

**NCEES Studies**
NCEES is seeking licensed engineers to participate in online surveys as part of the professional activities and knowledge study for the exam. These surveys will be used to update the specifications for the exam.

- **Civil Engineers’ Study** - The deadline is May 11, 2020.
- **Petroleum Engineers’ Study** - The deadline is June 15, 2020.

**Engineering & Surveying Board Merger**
Effective September 1, 2019, HB1523 created the Texas Board of Professional Engineers and Land Surveyors. This is a merger of both the engineering (TBPE) and surveying (TBPLS) boards. For more information please visit our TBPELS Merger page. Existing websites will continue to be in place until a combined website is ready:

- **Engineering:** https://engineers.texas.gov
- **Surveying:** http://tls.texas.gov

**TECHNICAL EXPERTS**
Do you want to assist in the enforcement process? Would you like to earn valuable Continuing Education credits in the process? How about the possibility of being paid for...
Professionalism

Chapter 137 Subchapter C – Professional Conduct and Ethics

- §137.53 – Engineering Standards of Compliance with Professional Services Procurement Act
- §137.55 – Engineers shall Protect the Public
- §137.57 – Engineers shall be Objective and Truthful
  - Avoid Misleading, Fraudulent, and Deceitful Actions
  - Avoid Conflicts of Interest
- §137.59 – Engineer’ Actions Shall be Competent
- §137.61 – Engineers Shall Maintain Confidentiality of Clients
Chapter 137 Subchapter C – Professional Conduct and Ethics

- §137.63 – Engineers’ Responsibility to the Profession
  - Be a faithful agent for employers or clients
  - Conduct business in a respectful manner
  - Do not injure professional reputation of others
  - Do not retaliate
137.1 License Holder Designations

1) “Engineer”,
2) “Professional Engineer”,
3) “Licensed Engineer”,
4) “Registered Engineer”,
5) “Licensed Professional Engineer”,
6) “Registered Professional Engineer”, or
7) Any combination of words with or variation of the terms listed in items (1)-(6) above.
Sealing Procedures – 137.33 (f)

Must Sign and Seal:

- Plans or drawings
- Engineering reports
- Specifications
- Details
- Calculations or estimates
Opinion of Probable Construction Cost

In providing Opinions of Probable Construction Cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor’s method of pricing, and that the Consultant’s estimates of probable construction costs are made on the basis of the Consultant’s professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Consultant’s estimate of probable construction cost.
May Sign and Seal:

- Research reports
- Opinions
- Recommendations
- Evaluations
- Addenda
- Documents produced for litigation, and engineering software

Bear the engineer’s printed name, date, signature and the designation “P.E.” or other terms as described in §137.1 of the Texas Engineering Practice Act (relating to License Holder Designations). A seal may be added on such work if required or at the engineer’s discretion.
A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

1) the client furnishes the documentation of such work submitted to the client by the first license holder;

2) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder’s design.
Professional Services Procurement Act – 137.53

- Qualifications Based Selection (QBS) on Public Projects
- Responsibilities of Professional Engineers
- Responsibilities of Public Officials in RFQ/RFP Process

- Texas Government Code, Chapter 2254
  - Professional and Consulting Services
PSPA Scenario

Not appropriate to seek for

- Fee proposal
PSPA Scenario

Not appropriate to seek for

- Fee proposal
- Hourly rates
PSPA Scenario

Not appropriate to seek for

- Fee proposal
- Hourly rates
- Estimated hours of certain task
PSPA Scenario

Not appropriate to seek for

- Fee proposal
- Hourly rates
- Estimated hours of certain task
- Past contract fees
Policy Advisories
Latest News

Texas Board of Professional Engineers and Land Surveyors

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TECHNICAL EXPERTS

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Policy Advisory Opinions

- Provision Added to TEPA in 2003
- Allows Board to develop formal written interpretations of law and rules
  - Specific or hypothetical situations
  - Interpretations of “gray areas”
- Over 40 interpretations for a variety of subjects
Advisory No. 7 – CME

- CME – Construction Materials Engineering
- CMT – Construction Material Testing
Advisory No. 7 – CME

- CME – Construction Materials Engineering
- CMT – Construction Material Testing

- May solicit bids in CMT
  - Collection of samples, as defined by a PE in specs
  - Public entity’s engineer must be competent and provide supervision
Advisory No. 10 – Professional Title Use

This policy only applies to those out-of-state professional engineers who do not offer to perform or perform engineering services in Texas. So as not to confuse the public sector and yet provide a clear definition of what is allowed, any professional engineer currently licensed in another state, but residing in Texas, and desiring to use their P.E. designation, must identify themselves on business cards and other correspondence as shown in the following example:

John W. Doe, P.E., Oklahoma
(Not licensed in Texas)
Graduate Engineer Title

- Graduate Engineer
- Project Engineer, Staff Engineer, Engineer II, (registered firm and under a PE)
- EIT
- EIT, Oklahoma
Texas Engineer-In-Training

EIT is a certification, not a generic terminology

- Passed FE Exam
- Graduated ABET College/University
- Apply to TBPELS
Advisory No. 16 – Engineering Competence

- Licensed Engineer
- No specific Disciplines
- Practice only in area(s) of Competency
- Two (2) additional branches of expertise
  - Transcript of additional degree,
  - Supplementary Experience Record; or
  - Passage of additional examination
Licensed professional engineers are not obligated to seal record drawings. An engineer has the option of sealing the drawing with or without the caveat but can only seal what they personally observed or supervised."
Sample Record Drawing

RECORD DRAWINGS OCTOBER 31, 2014

THIS RECORD DRAWING IS A COMPILATION OF A COPY OF THE SEALED ENGINEERING DRAWING FOR THIS PROJECT; MODIFIED BY ADDENDA, CHANGE ORDERS, AND INFORMATION FURNISHED BY THE CONTRACTOR. THE INFORMATION SHOWN ON THE RECORD DRAWINGS THAT WAS PROVIDED BY THE CONTRACTOR OR OTHERS NOT ASSOCIATED WITH THE DESIGN ENGINEER CANNOT BE VERIFIED FOR ACCURACY OR COMPLETENESS. THE ORIGINAL SEALED DRAWINGS ARE ON FILE AT THE OFFICES OF HUITT-ZOLLARS, INC. (DALLAS) AND THE CITY OF MESQUITE AND WERE SIGNED AND SEALED BY JOHN HO, P.E. (58873) ON 02/23/2014.
Advisory No. 23 – Engineering Aspects of Facilities Assessment

Engineering services include but are not limited to:

1) Engineering assessment of the structural integrity or soundness of a building or other structure.

2) Engineering assessment of the structural integrity of a building foundation and underlying supporting soil.

3) Engineering assessment of building mechanical and electrical systems.

4) Engineering assessment of building roof internal drain systems.
Examples of assessments that would not require the services of a professional engineer include:

1) Assessment of historical significance of structure or facility.
2) Assessment of building or property’s highest and best use.
3) Assessment of information technology systems in building (telephone and/or internet capacity).
Texas Penal Code Section 36.08
Gifts to Public Servants
Gifts should never be offered or given to a city official or employee in exchange for an exercise of official discretion because that is bribery.

Avoid giving/accepting gifts that exceed $50 in value.

Gift below $50 may never be in form of cash, check, or gift card!
As a Guest or Illegal Gift?

- Giving Tickets to an Astros Game vs. Taking Someone to an Astros Game:
  - Giving tickets violates prohibition on gifts over $50 (Penal Code)
  - Taking someone is permitted but reportable (Local Government Code 176)
The Gray Areas

- Raffles, Door Prizes, and Auctions
- Gift Cards Donated for Fundraising Purposes
- Secondary Recipients/Beneficiaries
- Solicitations by Public Officials
- Charitable Fundraisers
- Community Events
- Employee Parties
What You Can Do, Without Triggering Reporting Requirements

- Give a non-cash, non-negotiable instrument gift to a local government officer worth less than $50, as long as you don’t exceed $100 in gifts in a 12-month period.
- Take a local government officer out for unlimited meals (food and beverage as a guest).
What You Can Do, But Must Report

✓ Give/accept non-cash gifts worth less than $50 if the aggregate value exceeds $100 in a 12-month period preceding contract/date contract is sought

✓ Provide/accept entertainment, lodging, transportation as a guest and food not associated with a meal (wine basket, cookie bouquet) that exceeds $100 in the 12-month period

✓ Enter a contract to provide services to a city if a member of your family is a local government officer there

✓ Vote to award a contract to a vendor from whom you receive over $2500 in taxable income

✓ Participate in the selection process for a contract that is awarded to a vendor that employs one of your family members
Penal Code Exceptions 36.10

The prohibition on gifts to a public servant does not apply to:

- A fee prescribed by law/that public servant is lawfully entitled to
- A gift given on account of a business/personal/professional/family relationship independent of official status
- A gift worth less than $50 that is not cash or a negotiable instrument
- Political contributions (Title 15 Election Code)
- Certain benefits given to state/legislative/executive officers
- Transportation, lodging, meals and entertainment if they are accepted as a guest and reported if required by other law to be reported
Reportable vs. Non-Reportable Guest Activities

- Taking someone to a meal (food as a guest) is exempt from the reporting requirements – no $100 threshold
- Entertainment (sporting events, concerts, golf), lodging, and transportation are reportable and should be tracked
36.09(b) - Class A Misdemeanor

- Fine not to exceed $4,000
- Up to one year in jail
- Both
## Violations/Suggested Sanctions

<table>
<thead>
<tr>
<th>Classification</th>
<th>Violation</th>
<th>Citation</th>
<th>Suggested Sanctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering Misconduct</td>
<td>Failure to exercise care and diligence in the practice of engineering</td>
<td>§§137.55(b), 137.63(b)(6)</td>
<td>1 year suspension/ $2,500.00</td>
</tr>
<tr>
<td></td>
<td>Incompetence; includes performing work outside area of expertise</td>
<td>§137.59(a), (b)</td>
<td>3 year suspension/ $5,000.00</td>
</tr>
<tr>
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<tr>
<td>Licensing</td>
<td>Fraud or deceit in obtaining a license</td>
<td>§§1001.452(2) 1001.453</td>
<td>Revocation/$5,000.00</td>
</tr>
<tr>
<td></td>
<td>Retaliation against a reference</td>
<td>§137.63(c)(3)</td>
<td>1 year suspension/$2,500.00</td>
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<tr>
<td>Ethics Violations</td>
<td>Failure to report violations of others</td>
<td>§137.55(c)</td>
<td>Reprimand/$2,500.00</td>
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<tr>
<td></td>
<td>Failure to prevent violation of laws, codes, or ordinances</td>
<td>§137.63(b)(1), (2)</td>
<td>Reprimand/$2,500.00</td>
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<td></td>
<td>Failure to provide plans and/or specs to TDLR/RAS for assessment within 20 days of issuance</td>
<td>§§1001.452(5), 137.63(b)(1) and (2)</td>
<td>Informal Reprimand/$750.00</td>
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<td>Improper Use of Seal</td>
<td>Failure to sign, seal, date, or include firm identification on work</td>
<td>§§137.33(e), (f), (h), (n), 137.35(a), (b)</td>
<td>Reprimand/$750.00</td>
</tr>
<tr>
<td></td>
<td>Alter work of another</td>
<td>§§137.33(i), 137.37(3)</td>
<td>1 year suspension/$2,500.00</td>
</tr>
<tr>
<td></td>
<td>Sealing work not performed or directly supervised by the professional engineer</td>
<td>§137.33(b)</td>
<td>Reprimand/$1,500.00</td>
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<td>Improper Use of Seal (continued)</td>
<td>Sealing work endangering the public</td>
<td>§137.37(1)</td>
<td>Revocation/$5,000.00</td>
</tr>
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<td></td>
<td>Work performed by more than one engineer not attributed to each engineer</td>
<td>§137.33(g)</td>
<td>Reprimand/$750.00</td>
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<td>Administrative</td>
<td>Failure to report: change of address or employment, or of any criminal convictions</td>
<td>§137.5</td>
<td>Reprimand/ $150.00</td>
</tr>
<tr>
<td></td>
<td>Failure to include “inactive” or “retired” representation with title while in inactive status</td>
<td>§137.13(f)</td>
<td>Reprimand/ $500.00</td>
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Questions?