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Ethics: Disciplinary Action Cases in FL

The FBPE Disciplinary Process

Preface

This course is a brief study on the various disciplinary actions which have been levied against engineering professionals in the state of Florida. The basis for this study is from the 109 “active” cases which were found on the FBPE (Florida Board of Professional Engineers) website under disciplinary actions.

What is FS: Chapter 471

The Florida Legislature created Chapter 471 FS (Florida Statute), in order to regulate the practice of engineering in the state of Florida. Within the provisions of this law, the FBPE is able to review applications, administer exams, license qualified applicants, and otherwise regulate the practice of engineering throughout the state.

Florida Statutes (FS) and Administrative Code (FAC)

Additional statutes and code which apply to the profession of engineering are Chapter 455 of the Florida Statutes, and Chapter 61G-15 of the Florida Administrative Code.

Florida engineering licensees are expected to know the laws and rules governing their profession and to provide services in accordance with current regulations, codes, ordinances, and recognized standards. When deemed appropriate, the Board has the authority to discipline those individuals and firms (licensed and unlicensed) that practice, or offer to practice engineering.

The Board has the power to suspend, revoke, or refuse to issue, restore, or renew a certificate of authorization (for an engineering firm), or a certificate of licensure for an individual, or place on probation, fine, or reprimand any firm, professional engineer, or unlicensed individual found guilty of violating Florida Statutes and Rules.

FBPE's Complaints Dept.

FBPE's Legal Department, consisting of the following types of officials (Chief Prosecuting Attorney, Investigators, Paralegals, and Compliance Officer), are tasked with managing the complaint and disciplinary processes for Florida engineering licensees.

This department's duties include:

- review of complaints
- coordination of investigations
- preparation of Probable Cause Panel and Board meeting materials
- preparation of administrative complaints and orders
- litigation of cases at the Division of Administrative Hearings
- handling appeals to the court system
- assuring compliance with Board decisions

Overview of the FBPE Complaints Process

Who can file a complaint?

Anyone feeling that a licensee, firm, or individual has violated the provisions of law outlined in Chapter 455, FS, Chapter 471 FS, and Chapter 61G15 FAC, may file a complaint with the FBPE, even as an anonymous source.

The majority of official complaints received by FBPE are from consumers of engineering services and building department officials.

PEs and professionals from related fields, such as contractors, surveyors, and architects, may also file many of the complaints that form the basis for investigations, and are actually compelled by law to do so.

Once a complaint is filed, it is forwarded to a FEMC (Florida Engineers' Management Corporation) engineering consultant for review. The preliminary opinion and complaint documents are analyzed to determine if what is alleged was against the law. If the complaint is not a violation of law the file is then closed. If it is determined that the allegation does constitute a violation of the engineering laws or rules, an investigation will then take place.

Following an investigation, the case will go to the FBPE Probable Cause Panel, (similar to a grand jury), where the panel determines if the case should be recommended to the full FBPE for disciplinary action. The FBPE then serves as jury in the case, deciding guilt or innocence, as well as the discipline imposed.

Anonymous complaints

As mentioned previously, the FL Board accepts anonymous complaints; however, the Board encourages the complainant to include contact info in case additional information is required by the investigator.

Malicious “Bad Faith” complaints

In regards to the complaints process, it should be noted that Section 455.225, F.S., states:

“A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complaint or witness acted in bad faith or with malice in providing such information.”

Access to public records concerning disciplinary actions

Any member of the public can request information concerning disciplinary or enforcement actions involving Florida engineers or engineering firms.

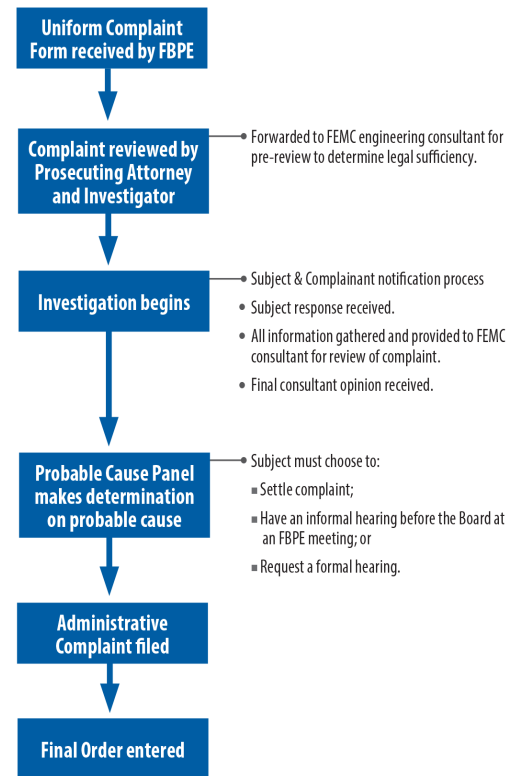
All information, records, and transcriptions regarding such actions, except information that is otherwise confidential or exempt from Section 119.07(1), FS, is available to the public for inspection or copying when the investigation ceases to be active, when probable cause has been found, or when a case is closed by the Probable Cause Panel or the Florida Board of Professional Engineers.

Licensees convicted of a crime in any jurisdiction

As provided in Section 455.227(1)(t), FS, Grounds for Discipline; Penalties; Enforcement:

“All FBPE licensees are required to report in writing to the Board within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction. “

Failure to timely report will result in disciplinary action being taken against the licensee.



The FBPE Complaints Process

Image source: FBPE.org

The following course sections provide a brief overview of the most common types of “active” disciplinary actions found on the FBPE website.

Failure to Comply with FBPE CE Requirements

CE Requirements in the State of Florida:

“All Professional Engineers licensed in Florida are required to obtain a total of 18 continuing education (CE) course hours every two years in order to renew their licenses.

Of the 18 hours, one hour must relate to the Florida laws and rules of Professional Engineers and one hour must relate to Florida professional ethics, both from a Board-approved provider. Four hours must relate to area of practice. The remaining 12 hours may be related to any topic pertinent to the practice of engineering.”

“Failure to complete the requirements set forth in Section 471.017(3), FS, and Rule 61G15-22.001, F.A.C., could result in a reprimand and \$1,000 fine or suspension of license until the licensee demonstrates compliance. Secondary or subsequent violations could result in possible revocation”.

The most common reason for DA by the board

Based on the cases posted on the FBPE website, the most common reason that PE's may face disciplinary action in Florida, is from the failure to complete their continuing education requirements prior to license renewal. Well over half of the disciplinary action cases posted are due to this type of violation.



Typical disciplinary action:

"Licensee was charged with violating Sections 471.033(1)(a) FS, and Rule 61G15-19.001(6)(s) FAC; renewing his/her Professional Engineer license without having completed all required continuing education."

Sections and rules within the Florida legislation which pertain to this violation are:

- FS 471.033 (1)(a) - (a) Violating any provision of s. 455.227(1), s. 471.025, or s. 471.031, or any other provision of this chapter or rule of the board or department.
- FAC Rule 61G15-19.001(6)(s) – "Renewing or reactivating a license without completion of Continuing Education (CE) hours and subject areas as required by Section 471.017, F.S., and Rule 61G15-22.001, FAC"

Ruling and fines imposed upon licensee

The typical ruling for this type of violation was a formal reprimand, and the imposing of an administrative fine of \$500 or \$1000, plus "administrative costs" which usually ranged from \$50 to \$150.

Suspended license to practice

When the licensee repeatedly failed to obtain all CE hours prior to renewal, or ignored the board's notices, the board would impose a penalty of suspension of license until the licensee successfully completed the 18 continuing education hours required for the renewal period.

Upon completion, the licensee would be required to petition the Board for reinstatement of his/her license and appear before the Board for consideration of the petition.

Voluntary relinquishment of license to practice

This case was presented to the full Board upon a voluntary relinquishment of license to practice. The Board accepted the licensee's voluntary relinquishment.

Licensee failed to respond to the administrative complaint

An additional case which varied slightly from the other cases was when the licensee failed to respond to the administrative complaint.

This case was presented to the full Board upon having received no response to the properly filed administrative complaint. The Board adopted the findings of fact and conclusions of law alleged in the administrative complaint.

Conclusion

Within this study of active engineering disciplinary actions in the state of Florida, 62 of the 109 disciplinary actions were due to the engineer's failure to complete their continuing educational requirements prior to license renewal.

Often it was their failure to complete just the ethics or laws and rules courses. However, a failure to complete all 18 hours prior to the end of the renewal period through a state board course provider is grounds for reprimand, suspension of license, or the relinquishment of license.

Negligence in the Practice of Engineering (Material Deficiencies)

Second most common type of DA

The second most common type of violation found in the active cases, is negligence in the practice of



engineering. 26 of the 109 total active disciplinary action cases were of this nature. These violations stemmed from the sealing, dating and signing of engineering documents, which contained "material deficiencies".

Typical rulings

Most rulings involved the levying of fairly large administrative costs as a part of the penalty, due to the expense of investigating this type of violations.

In addition, licensees received probation and/or reprimand with accompanying terms and conditions. These terms often included completion of a Board-approved basic engineering professionalism and ethics course, periodic project reviews, and completion of the Board's study guide.

Below are various types of negligence cases, which include the types of deficiencies encountered:

Negligence in General Construction

Licensee submitted plans with deficiencies.

Electrical deficiencies:

- no surge protective devices shown on drawings
- no outdoor receptacle outlets shown
- no lighting fixture performance specs .

Mechanical (Plumbing) deficiencies:

- drawings contain no plumbing equipment schedules
- total water fixture units are omitted
- no storm riser diagram
- no piping layouts, etc.

Structural deficiencies:

- no live / dead loads indicated on the plans
- no strength of materials' listed for the wood, reinforcing steel, concrete or grout, etc.

Geotechnical

This geotechnical engineer was engaged to perform foundation stabilization reports for the client. The licensee submitted reports for various residences that contained information that was virtually verbatim copies of data and conclusions found in signed and sealed engineering documents prepared by other engineering firms and were also materially deficient.

The material deficiencies included:

- The statement that "structure will be stabilized by underpinning" (this remediation ignores the effect of the underpinning upon an interior load-bearing structural wall)
- underpinning is materially inadequate in that it fails to acknowledge that the continuous strip foundation that was identified as supporting the original structure is a flexible foundation intended to be continuously earth supports
- lacks sufficient section properties or reinforcement to function as a "pile cap" or "grade beam."

The certifications also contained material deficiencies:

- contrary to Respondent's explicit statement in the FSR, the projects don't comply with accepted standards of engineering practice applicable to sinkhole subsidence remediation
- The statement "the foundation repairs are sufficient to prevent settlement of the structure" is materially inaccurate. The repairs

as completed will only minimize settlement under some conditions, but will not prevent settlement as certified, etc.

Piping

This case involved the substandard design of a fire sprinkler system; including the installation of new underground private fire service mains.

Deficiencies found:

- the water supply included does not meet the requirements of NFPA 13
- hydraulic calculations are not properly prepared
- requirements for testing and inspection of the fire sprinkler systems are not included
- point of services not indicated on the drawings, etc.

Hydraulics

Licensee was engaged to provide no-rise certification.

Deficiencies included:

- Neither of the No-Rise Certifications includes a floodway analysis. As such, licensee's No-Rise Certifications do not meet acceptable standards of engineering principles for the performance of No-Rise Certifications in light of the fact that the requirement for a No-Rise Certification is triggered by proposed construction in a mapped floodway, and specifically references floodway elevations and floodway widths
- Basic hydraulics suggests that any obstruction placed within a riverine cross-section that is narrower than another riverine cross-section is likely to have a different impact on that cross-section. Licensee's No-Rise Certifications ignore the encroachments thus ignoring basic hydraulics.
- Licensee erroneously entered NFIP Base Flood Elevations as known water surface elevations at multiple cross-sections. This action ensured that the model's results at those sections would reflect what was entered and negated the purpose of using the model as an independent calculating tool to identify potential differences for a sufficient distance from the proposed construction along the modeled water course.

Negligence in Inspections

The Licensee signed, sealed and dated inspection and completion reports for several properties. The purpose of the inspection/completion reports was to confirm that sinkhole remediation work had been performed in conformity with remediation plans.

The remediation work was materially deficient and Licensee failed to utilize due care in performing in an engineering capacity and failed to have due regard for acceptable standards of engineering principles.

Land Planning (Improper Permitting)

Licensee was hired to provide engineering services that included planning, permitting and construction of a residential subdivision.

Deficiencies:

- Licensee notified the client that the project was prepared for roads and drainage systems and the water transmission; however, there were no proper DEP permits for storm water discharge or proper approval of construction plans.

Negligence in the Practice of Engineering as a Special Inspector

Licensee was charged with negligence in the practice of engineering as a Special Inspector. Licensee was tasked with performing the duties of a Special Inspector for a threshold building project in the City of Port St. Lucie.

In performing those duties, Licensee was to assure that all field inspections were performed in accordance with the Threshold Inspection Plan.

The plan required that that Licensee or Licensee's authorized representative be present at all concrete pours. Licenses signed, sealed and dated a Floor Flatness/Levelness Testing Report and another report for another level, even though, neither Licensee nor Licensee's authorized representative were present for these pours.

Certification Letter Submitted on Incomplete Project

Licensee was charged with negligence in the practice of engineering. Licensee signed, dated, and sealed a set of engineering plans for a carport parking that were approved and construction commenced.

Licensee submitted an electronically signed and sealed Certification letter to the building department certifying that the project was constructed such that the design, intent and functionality of the project conform to the approved construction plans.

Contrary to the Certification letter, the worked on the project had not been completed.

Engineering with a Delinquent/Suspended License

An engineer is not allowed to practice engineering or act in a position of responsible charge while their

license is revoked, delinquent, suspended, retired or inactive.

Provided engineering services to the public while the CA was delinquent

Licensee offered engineering services through a company with a delinquent CA. Licensee's CA became delinquent due to failure to renew the Certificate. Licensee both offered and provided engineering services to the public while the CA was delinquent.

Practicing Engineering on a delinquent license

Licensee was charged with practicing engineering on a delinquent license. A citation was issued to licensee who disputed the citation. (In lieu of agreeing to the Citation, licensee chose to voluntarily relinquish his license)

Sealing Documents while License Suspended

Licensee was charged with providing engineering services through signing, sealing, and dating engineering documents after licensee's license was suspended.

Disciplined due to Criminal Activity

Criminal Acts

A number of the disciplinary action cases were due to the licensee being tried and convicted of various levels of criminal activity.

Below are some examples:

Computer Hacking

Licensee was charged with having a license to practice engineering revoked by the licensing authority of another state; being convicted or found guilty of a crime in any jurisdiction which directly relates to the practice of engineering or the ability to practice engineering. Licensee pleaded guilty to criminal charges of accessing a computer and obtaining information.

These charges stemmed from licensee having accessed a computer without authorization and thereby obtained information from a protected computer, which was valued to exceed \$5,000.

The computer, which was unlawfully accessed, belonged to Licensee's previous employer.



Board accepted the relinquishment of license with licensee's agreement to never reapply for licensure as a PE in Florida.)

Failure to maintain good moral character required of a PE

Licensee was charged with being found guilty of a crime evidencing a lack of moral character and thus has not maintained good moral character required of a PE.

Additionally, Licensee failed to report a previous conviction to FEMC or the Board.

Guilty of a crime which pertains to the practice of engineering

Licensee was adjudicated guilty of a crime which directly relates to the practice of engineering or the ability to practice engineering.

Licensee was found guilty by a jury and adjudicated guilty of the charge of bribery (solicitation or request) by a public servant.

Failure to report a felony conviction to the Board within 30 days

Prior Licensee was charged with failure to report in writing to the board, within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction.

Conviction of a crime "in any jurisdiction" which directly relates to the practice of engineering

Licensee was convicted or found guilty of, or entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of engineering or the ability to practice engineering, and failure to report the adjudication of guilt to the Board.

Theft from Employer



Licensee entered a plea of guilty to criminal charges relating to fraud and civil theft from Licensee's employer – a contractor. Since the criminal actions occurred while performing services which, when

performed by a PE, involved the use of engineering skills and the actions showed a lack of good moral character, the facts underlying the guilty plea involved the practice of and ability to practice engineering.

Violating Order of the Board

Failing to perform statutory or legal obligation placed upon licensee

Licensees were charged with failing to perform any statutory or legal obligation placed upon licensee; violating any order of the board or department previously entered in a disciplinary hearing.

Licensee possessed CAs to offer engineering services in Florida. Licensee was issued a Closing Order/Letter of Guidance for practicing through a firm, which did not possess a CA (the previous CA having gone Null & Void or Delinquent).

Failure to provide name of Principal Officer for CA (Certificate of Authorization)

Licensee was charged with failing to perform any statutory or legal obligation placed upon licensee. Licensee sent the Board an application to change the information upon which their CA was based.

The change was due to the fact that the PE who had previously acted as licensee's engineering principal officer, no longer acted as such.

However, and despite several notices, the new principal officer was never listed as a principal officer at the Florida Secretary of State's website and no corporate resolutions were ever received by the Board.

Violating order of the board or department previously entered in a disciplinary hearing

Licensee was charged with violating an order of the board or department previously entered, in a disciplinary hearing.

In 2014, a Final Order was entered by the Board. The Final Order provided, in material part, that licensee shall provide a detailed list of completed projects at six- and 18-month intervals, which would be reviewed by a FEMC consultant.

The list of projects for the 18-month project review, were due in May, 2016. This list of projects was never received. The case was presented to the full Board upon a Motion for determination that Respondent forfeited his right to an administrative hearing.

Unlicensed/Unlawful Practice of Engineering

Non-engineers

Some of the disciplinary actions levied here were against practicing and licensed (or previously licensed) PEs, while other actions were against individuals that had never held a license to practice.

Unlawful practice of engineering through a business entity

Respondent was charged with violations Sections 455.228(1), 471.031(1)(a), and 471.038(5), Respondent does not and has never possessed a Certificate of Authorization by the Board. Respondent's web page contained a statement of services provided by Respondent which states that "Firm is a full service professional engineering firm working on residential and corporate projects..."

Respondent was issued a Notice to Cease and Desist yet failed to respond to the complaint and initially failed to remove the offer of engineering services on its website.

Offering engineering services without a Certificate of Authorization

On its website respondent offered a "full range of engineering services" which, as fully set forth therein, include numerous activities which fall within the provisions of Section 471.005(7).

Offering to practice engineering without license

The unlicensed company was charged with violating Section 455.228(1), 471.031(1)(a), and 471.038(5), FS; offering to practice engineering without a license. The company's advertising offers engineering services to the public and the company does not hold a Certificate of Authorization.

Submitting plans which did not contain a PE seal and signature



Engineering plans for an engineering project were submitted to the Building Department for public record using the title block of Licensee. The plans did not contain the seal and signature of a professional

engineer, but instead contained only the name of Licensee, which constitutes the unlicensed practice of engineering.

the cases involved simple oversight, poor judgement, and carelessness on the part of the licensee.

However the profession of Engineering calls for being held to a higher standard of care and due diligence, due to the level of harm that can be caused by neglect, carelessness, laziness, and a failure to adhere to commonly accepted standards of practice.

With many cases, however, it was clear that there was indeed, a clear intent to misrepresent, mislead, and otherwise practice engineering in a manner which was unethical, immoral, and potentially criminal in nature.

Bibliography

- much of this course was based upon posted disciplinary action cases found on the Florida Board of Professional Engineer's website: FBPE.org, 2018
- Florida Administrative Code
- Florida Statutes

Conclusion

In reviewing the 109 active enforcement or disciplinary cases found on the FBPE website, it is clear that some of