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FOR PROFESSIONAL ENGINEERS

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INFORMATION BULLETIN

JANUARY 1993

## PRACTICE ACT AMENDED

The Texas Engineering Practice Act (TEPA) was amended by the 72nd Legislature in 1991, as part of HB 39 pertaining to the Architectural Barriers Law, Article 9102, Revised Statutes. The amendment was not discovered in time to be included in the January 1992 Newsletter.

HB 39, in part, added paragraph (5) to Section 22(a) of the TEPA, which is the section that specifies the grounds for disciplinary action by the Board against its registrants. Paragraph (5) specifically adds, "A failure to timely provide plans and specifications to the Texas Department of Licensing and Regulation as required by Article 9102, Revised Statutes." Art. 9102 provides for the elimination, insofar as possible, of unnecessary barriers encountered by persons with disabilities in public accommodations such as hotels, restaurants, theaters, auditoriums, retail stores, hospitals, health clubs, etc.

One of the requirements of the law is that all plans and specifications for construction or substantial modification of buildings subject to the law shall be submitted to the Department of Licensing and Regulation for review and approval before the work begins. The responsible architect or engineer is required to submit the plans and specifications. If not submitted in a timely manner, the Department is to report the fact to the appropriate regulating board which can then take action. An engineer would be subject to disciplinary action under the new §22(a)(5).

## NEW BOARD MEMBERS APPOINTED

On February 21, 1992, Derrell E. Johnson, P.E., of Southlake, Texas, was appointed to the Board for a six-year term to replace Joseph J. Beal, P.E., of Austin, whose term expired. Mr. Johnson is president and chairman of the board of Rady and Associates in Fort Worth.

On the same date, an historic first for the Board was realized with the appointment of the first woman to serve as a Board Member. Mrs. Roxanne L. Pillar, P.E., of Fort Worth, who is currently employed by the Federal Aviation Administration, will serve a six-year term to replace Dave Dorchester, P.E., of Midland,

whose term expired. The Board has since sponsored Mr. Dorchester as an emeritus member of the National Council of Examiners for Engineering and Surveying.

Former public member James Ken Newman of Denton resigned on December 31, 1991, after serving nine years on the Board. A public member replacement has yet to be appointed by the governor.

## STAFF PERSONNEL CHANGES

Mr. H. Edwin Crow, P.E., former Assistant to the Executive Director, retired on July 31, 1992, after serving nearly nine years as a highly valued member of the Board staff.

Ed has been replaced by Mr. T. M. "Tommy" Newton, P.E., who joined the staff from the Texas Engineering Extension Service, Texas A&M University System, where he served as a Training Specialist for ten years.

Mr. Kenneth Wood resigned on August 31, 1992, after serving eight years and eight months as an experienced staff investigator.

Mr. Edward S. Jones was hired on November 2 as the replacement investigator. Ed is retired from the Air Force and brings to the staff nearly 13 years of service as a Special Agent with the USAF Office of Special Investigations (IG).

In the past year, the registration and administrative support staffs have been augmented with new employees Ms. Norma Day, Ms. Kari Miller, Ms. Diana Sirio and Ms. Sharon Nitkin.

## 1993 ROSTER OF ENGINEERS

The board intends to publish a roster of engineers as soon as possible after the first of the year. The roster will include a copy of the Texas Engineering Practice Act, with all amendments through the 1991 legislative session, and Board Rules including all rule changes adopted by the board since publication of the November 1990 roster, some of which are highlighted elsewhere in this Newsletter.

SIGNIFICANT ATTORNEY GENERAL  
OPINION

As reported in the January 1992

Newsletter, the Board of Architectural Examiners had sought an opinion from the Attorney General regarding the design of certain public works. Opinion No. DM-161 was issued on August 27, 1992, and the summary is as follows:

"Section 16 of article 249a, V.T.C.S., the statute regulating the practice of architecture, does not bar a professional engineer licensed under article 3271a, V.T.C.S., from preparing plans and specifications, the preparation of which requires the application of engineering principles and the interpretation of engineering data, for a new building that is to be constructed and owned by a State agency, a political subdivision of this State, or any other public entity in this State if the building will be used for education, assembly, or office occupancy and the construction costs exceed \$100,000."

## RULE CHANGES

Since publication of the January 1992 Newsletter, the following rules have been amended: 131.51, 131.53, 131.54, 131.55, 131.57, 131.58, 131.71, 131.73, 131.81, 131.91, 131.92, 131.101, 131.102, 131.103, 131.104, 131.112, 131.113, 131.114, 131.133, 131.137, 131.139, 131.172 and 131.173.

Of all the rules summarized below, applicants for registration should pay particular attention to Rules 131.51 through 131.133 when they receive their application package.

**RULE 131.51:** "Authority. Applications for registration will be accepted only under the Act, §12(a)(1), (2), or §21...."

**RULE 131.53:** pertains to the submission of applications, and a reference to "the application fee" has been changed to correctly read "the registration fee."

**RULE 131.54:** pertains to general application information and has been amended extensively. Disregard in part the previous subsections (a) through (d).

"(a) An individual must pass or be exempted from the fundamentals of engineering examination before submitting an application for registration.

"(b) Applications for registration may be submitted at anytime; however, in order for the board to review and approve the application in sufficient time for the applicant to schedule the

next available principles and practice of engineering examination, the board must receive and accept a completed application by the following deadline date: (1) the end of the second (2nd) week in May for the fall (October) principles and practice of engineering examination. (2) the end of the second (2nd) week in October for the spring (April) principles and practice of engineering examination.

"(c) The applicant will be notified in writing of the board's approval of the applicant's engineering experience and education and that the applicant has been approved to take the examination. Appropriate forms for the applicant to schedule the examination will be included with the written notification from the board as described in §131.101 of this title (relating to Engineering Examinations Required for Registration as a Professional Engineer).

"(d)" is identical to the first four paragraphs of the former Subsection (b) with the following two additional submissions for which the applicant is responsible: "(5) documentation verifying that the applicant has passed the fundamentals of engineering examination; and (6) the current registration fee.

"(e)" is identical to the former Subsection (b) regarding the fact the board may request additional information from the applicant, else the incomplete application will be not approved by the board.

"(f)" is identical to the former Subsection (c) regarding the ability to speak and write the English language and pass tests to verify same.

"(g)" is identical to the former Subsection (d) regarding evidence that an applicant other than one referred to in Subsection (f) may be required to take the English language tests.

**RULE 131.55:** pertains to applications for registration from nonresidents and was amended merely to properly refer to new Sections 12(a)(1) and (2) of the Act.

**RULE 131.57:** pertains to the registration fee and was amended to properly refer to new Sections 12(a)(1) and (2) of the Act.

**RULE 131.58:** pertains to withdrawing applications and was amended to properly refer to "the registration fee" rather than to an "application fee.

**RULE 131.71:** "Reference Statements. (a) The applicant, as a part of the application for registration, shall send a copy of the board's reference statement form and a copy of the portion of the applicant's supplementary experience record (SER) that the reference is to verify to a minimum of five references of which three must be professional engineers. The reference writer should complete the reference statement, sign the copy of the SER signifying agreement with the information written by the applicant and place the completed reference statement and signed SER in an envelope. After sealing the envelope, the reference writer should place his signature across the sealed flap of the envelope along with his professional engineer's registration number, if applicable, and cover the signature with transparent tape. The reference writer

should then return the sealed envelope to the applicant. The applicant must enclose all of the sealed reference envelopes with his application when he submits it to the office of the board. An application received without the required references, or with envelopes that have evidence of tampering, shall be considered an incomplete application and returned to the applicant.

**RULE 131.73:** pertains to communications by the board to references, and was amended by deleting Subsection "(d) References dated more than one year prior to board review are not acceptable."

**RULE 131.81:** is an extensive rule pertaining to experience evaluation and was amended in seven various parts. The preamble now properly makes reference to §12(a)(1) and (2) of the Act. Paragraph (12) pertains to foreign experience and the ability to use United States standards, codes, and other engineering procedures, and was amended by adding the following: ".except those who are applying under the Act, §21. Engineering experience claimed for a graduate degree in engineering will not be acceptable for the experience requirement of this paragraph.

Paragraph "(14) Engineering experience, to be considered creditable for registration purposes, shall have been gained after the receipt of the first engineering or related science degree. Those applicants who are applying under the Act, §12(a)(2), must pass or be exempted from the fundamentals of engineering examination before the required eight (8) years of engineering experience will begin to accrue as creditable experience. Exceptions to this requirement include the following:

"(A) Individuals who have graduated prior to September 1, 1992, from a four-year curriculum in a non-EAC/ABET-accredited degree program in engineering or related science which has been approved by the board must apply under the Act, §12(a)(2), and may claim engineering experience gained up to September 1, 1992, but must pass the fundamentals of engineering examination before any additional experience will be considered creditable for registration purposes.

"(B) All individuals who claim engineering experience prior to the receipt of a four-year degree from an EAC/ABET-accredited engineering program, and subsequently receive such a degree, must furnish documented proof to the board explaining the circumstances under which the experience was gained. Such applicant must have gained an additional one year of engineering experience after the receipt of the degree to prove competence in the practice of engineering. The credit for one year of engineering experience allowed for a graduate degree in engineering as described in paragraph (9) of this section will not be acceptable for this one year of additional engineering practice. The applicant may be required to make a personal appearance before the board at the request of the board.

Paragraphs (15) and (16) were amended

merely to make proper reference to the new §12(a) of the Act.

**RULE 131.91:** "Educational Requirements for Registration.

(a) An approved curriculum in engineering as used in the Texas Engineering Practice Act (the Act), §12(a)(1), is construed by the board as follows: (1) All engineering degree curricula approved by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology, Inc. (ABET). (2) other bachelor's degrees in engineering approved by the board. (3) a bachelor's degree in one of the mathematical, physical, or engineering sciences and in addition thereto, a master's degree in engineering or a doctor's degree in engineering, or both, provided: (A) the master's degree in engineering or the doctor's degree in engineering, or both, is EAC/ABET-accredited or is obtained from a college having an EAC/ABET-accredited bachelor's degree in the same discipline; and (B) the combination of bachelor's degree and the master's degree or doctor's degree, or both, is acceptable to the board as equivalent in EAC/ABET-approved curricula content to an approved bachelor of engineering degree.

"(b) A curriculum in engineering or related science as used in the Act, §12(a)(2), is construed by the board to be a bachelor of science degree in an engineering or related science program. These programs will include the following: (1) an engineering technology curriculum that is accredited by the Technology Accreditation Commission (TAC) of the Accreditation Board for Engineering and Technology, Inc. (ABET), referred to as TAC/ABET (2) bachelor degree programs in engineering, other than a curriculum approved by the board in subsection (a) of this section, or in the mathematical, physical, or engineering science field approved by the board. Such degree programs must include, as a minimum, the courses listed in subparagraphs (A) and (B) of this paragraph or these courses must be taken in addition to the bachelor program. (A) 12 semester hours (18 quarter hours) of mathematics beyond trigonometry including differential and integral calculus and differential equations, and (B) 20 semester hours (30 quarter hours) of engineering sciences which must include mechanics; thermodynamics; electrical and electronic circuits; and others selected from material sciences, transport phenomena, computer science and comparable subjects depending on the discipline or branch of engineering. Course work must incorporate hands-on laboratory work as described in the EAC/ABET criteria. Basic science courses to meet the prerequisites for these courses must be taken in addition to the 20 semester hours.

"(c) A list of recognized degrees for subsections (a) and (b) of this section is available in the board office.

"(d) Applicants with foreign degrees must apply under the provisions of the Act, §12(a)(2), unless such applicant meets the requirements of subsection (a) of this section.

**RULE 131.92:** pertains to foreign degrees and was amended to properly refer to the new §12(a)(1) and (2) of the Act. Subsection (a)(2) of the rule was amended to add the following: "Verification from the ABET counterpart organizations (such as an Engineering Council) in the foreign country where the engineering degrees were awarded must be submitted with the application for registration. The verification must include the statement that such engineering degrees were suitable for registration purposes as a professional or chartered engineer in that country at the time the degrees were awarded.

Subsection (b) now reads: "Applicants who do not meet the requirements of subsection (a)(1) or (2) of this section must furnish at their own expense an evaluation of their foreign degree(s) from a commercial evaluation service selected by the board. The degree evaluation must be sent directly to the board by the evaluation service. Applicants must submit with their applications complete certified copies or documented proof of all engineering degrees, diplomas, certificates, etc., showing the type of engineering degree awarded (B.S. M.S. Ph.D.), date awarded, branch of engineering, dates attended, and scores, grades, or honors awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

**RULE 131.101:** pertains to engineering examinations required for registration as a professional engineer, and is a new rule, effective September 1, 1992, to replace the rescinded Rule 131.101 no longer applicable. The new rule is quite comprehensive and is not quoted herein. Former registrants and first-time applicants who will require the two eight-hour examinations should be certain they are complying with Rule 131.101 which is effective September 1, 1992. Individuals who have been approved to take the examinations for registration will be charged an established fee for each examination scheduled. All examinations will be in the English language, and offered twice a year. Individuals may be exempt from one or both written examinations for specific reasons. An individual must pass the fundamentals of engineering examination before an application for registration may be filed with the board unless that individual is eligible to apply for exemption under subsection (d) of this section. Applicants must either pass or be exempt from the fundamentals of engineering examination in order to be eligible to take the principles and practice of engineering examination.

**RULE 131.102:** pertains to examinations for record purposes and the former subsections (d) and (e) have been deleted, and a new subsection (d) now reads: "The principles and practice of engineering examination may not be taken for record purposes unless an individual is registered as a professional engineer or has been given permission by the board to take the examination for registration purposes.

**RULE 131.103:** "Engineer-in-Training. Individuals who have an EAC/ABET-accredited engineering degree or a four-year degree in engineering or engineering-related science approved by the board and have successfully passed the fundamentals of engineering examination are eligible to apply for engineer-in-training certification.

**RULE 131.104:** pertaining to engineer-in-training certificates was amended to reflect its expiration as eight years instead of the former 12 years. Added to the end is the following: "The certificate may be renewed one (1) time at the request of the individual provided the request is accompanied by an explanation for the reason of the renewal and such request is approved by the board.

**RULE 131.112:** pertains to approved applications and sets forth the review responsibilities of the executive director or his designated representative and the board members before the applicant will be granted permission to take the principles and practice of engineering examination. The applicants approved under this section will be notified in writing that permission has been granted to take the examination, and the necessary forms to schedule the next available examination also will be enclosed. When the applicants have passed the examination, registration may be granted without further board review and a record of this action will be made a part of the minutes of the next regular board meeting.

**RULE 131.113:** pertains to applications not approved and was amended merely to make proper reference to the new §§12(a)(1) and 12(a)(2) of the Act.

**RULE 131.114:** pertains to rejected applications and was amended to make proper reference to the new §§12(a)(1) and 12(a)(2) of the Act.

**RULE 131.133:** pertains to certificates of registration and was amended to add alphabetical code "(x) control systems" to the list of accepted branches of engineering for which there is an available principles and practice examination from NCEES.

**RULE 131.137:** pertains to disciplinary actions. See subsequent article on Disciplinary Guidelines.

**RULE 131.139:** pertains to reregistration by persons whose original certificate of registration has been expired for two or more years, and was amended to make proper reference to the new §§12(a)(1) and 12(a)(2) of the Act.

**RULE 131.172:** had its title changed to "Complaints Against Nonregistrants.

**RULE 131.173:** had its title changed to "Complaints Against Registrants.

## INJUNCTIVE MATTERS

Since publication of the last Newsletter the following injunctions have been granted to the Board for varied violations of the TEPA: El-Tek Engineering, Arlington, TX; Mr. Ron Pointer, dba Pasco Engineering, Garland, TX; Mr. McO

Johnson, Palestine, TX; and Mr. M. Medina, dba Medina Construction Company, Harlingen, TX.

## DISCIPLINARY ACTIONS

Since the last Newsletter, five disciplinary actions have been taken by the Board. Samuel H. Faris, P.E. had sealed incomplete plans which were not prepared by him or under his responsible supervision, for which he received a one-year probated suspension.

Mr. V. A. Couch, P.E. received a six-month probated suspension for failing to prevent an associate from misrepresenting himself as an engineer. A condition of the probation was to provide the Board within four months a 1,000 word paper on rules violations.

Charles A. Lusher, P.E. received a two-year suspension of his license with probation of the suspension to take effect only upon verification he completed the basic level Independent Study and Research Program in engineering ethics and professionalism.

Don H. Bizzell, P.E., had released unsealed plans without annotation that they were not for construction, for which he received a formal reprimand.

H. Edwin Nicholson, P.E., received a formal reprimand for improperly certifying that the superstructure and a door lintel of a residential room addition were constructed to building code standards, which in fact they were not.

## DISCIPLINARY GUIDELINES ADDED TO BOARD RULES

A Board committee has been studying the prospect of using disciplinary guidelines to assist in issuing similar sanctions for similar infractions of the Act and rules. A proposal, as set forth below, is flexible enough to factor in mitigative considerations; and to attach conditions to suspensions, probations and formal reprimands, such as completion of the Independent Study and Research Program in engineering ethics and professionalism.

**RULE 131.137:** pertaining to disciplinary actions was amended by adding subsection (h) to provide guidelines for board action involving specific infractions.

"(h) The facts and circumstances of each disciplinary case will be assessed by the following factors before any sanctions available to the board are ordered: (1) the seriousness of the prohibited acts or omissions; (2) the number of prior complaints found justified against the respondent; (3) the severity of penalty necessary to deter future violations; (4) efforts or resistance to correct the violations; (5) any hazard to the health, safety or welfare of the public; (6) any actual damage, physical or otherwise, caused by the violations; (7) any economic benefit gained through the violations; (8) any other matters that justice and public welfare may require.

"(A) The following is a table of suggested sanctions for specific infractions of the law and rules:

| <b>INFRACTION</b>  | <b>CITATION:<br/>LAW / BOARD RULES</b>   | <b>SUGGESTED SANCTION</b> |
|--|--|---------------------------|
| 1. Fraud or deceit in obtaining a license.   | Section 22(a)(1); Section 23(a)  | Revocation                |
| 2. Gross Negligence  | Section 22(a)(2) / 131.153(a), (b), (c)  | Revocation                |
| 3. Incompetency  | Section 22(a)(2) / 131.153(a), (b), (c)  | 3-year Suspension         |
| 4. Misconduct and violation of Act or Rules: Retaliation against a Reference; attempt to injure reputation of another; failure to report violations of others. | Section 22(a)(2), (3), (4) / 131.141; 131.156(a)(12)                                   | 1-year Suspension         |
| 5. Practice or affix seal with expired license   | Section 1.2; Section 15(b) / 131.138(4)  | 6-month Suspension        |
| 6. "Plan stamping"   | Section 22(a)(4) / 131.138(2)  | 2-year Suspension         |
| 7. Seal work endangering the public  | Section 22(a)(4) / 131.138(3); 131.151   | Revocation                |
| 8. Failure to safeguard seal; failure to seal, sign or date work; other seal infractions   | Section 22(a)(4); Section 15(b), (c) / 131.138(1), (5), (6), (7), (8), (9); 131.156(b) | 1-year Suspension         |
| 9. Criminal convictions  | Section 22(a)(4) / 131.137(d)  | 2-year Suspension         |
| 10. Conflicts of interest or making public statements without full disclosure  | Section 22(a)(4) / 131.152; 131.156(a)(7)  | 1-year Suspension         |
| 11. Reveal confidences and private information   | Section 22(a)(4) / 131.154   | 1-year Suspension         |
| 12. Misrepresentations   | Section 1.2; Section 1.3; Section 22(a)(4) / 131.155(b), (c); 131.156(a)(9)            | 1-year Suspension         |
| 13. Bribery or solicitation  | Section 22(a)(4) / 131.155(a)  | Revocation                |
| 14. Competitive bidding  | Section 22(a)(4) / 131.155(d)  | 1-year Suspension         |
| 15. Aiding and abetting unlicensed practice, or other unauthorized assistance  | Section 22(a)(4) / 131.156(a)(8), (10), (11), (13), (14); 131.164                      | 2-year Suspension         |
| 16. Failure to return seal imprint, report change of address or employment or to communicate with the Board  | Section 22(a)(4) / 131.131; 131.134; 131.140; 131.167(b)                               | 6-month Suspension        |
| 17. Violate other laws, codes or ordinances  | Section 22(a)(4), (5) / 131.156(a)(4)  | 1-year Suspension         |
| 18. Violate registration laws of other states  | Section 22(a)(4) / 131.157   | Equivalent                |
| 19. Conduct which involves moral turpitude   | Section 22(a)(4) / 131.156(a)(5), (6)  | 1-year Suspension         |
| 20. Other infractions of the Act or Rules  | Section 22(a)(4) / 131.156(a)(1), (2), (3), (15); 131.166                              | 6-month Suspension        |

\*(B) Any felony conviction which includes incarceration will statutorily require the revocation of a certificate of registration.

\*(C) The board, the executive director, an administrative hearing judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in subparagraph (A) of this paragraph based on the ultimate assessment of evidence or agreement in the expedience of justice. Conditions of a suspension, probation, or formal reprimand may be set by the board in its final order.

**1993 EXAMINATIONS**

Examinations will be administered on April 17, 1993, with an application deadline of February 19. In October, and for the first time on a day other than Saturday, the board will administer the Principles and Practice exam on Friday, October 29. The Environmental Engineering specialty is expected to be available. The fundamentals exam will be conducted on Saturday, October 30, and the deadline for both October exams is September 17. Noteworthy, also, is the fact that the October fundamentals exam is anticipated not to be the open book type: NCEES will provide a manual of supplied references.

**MISUSE OF AN ENGINEER'S SEAL OR SIGNATURE**

This is a reminder to licensees and to their supervisors that the actual seal and signature of a registrant, or an authorized CADD reproduction according to the strict provisions of Board Rule 131.138(5), must be affixed to drawings and to specifications by the licensee, and not applied by someone else (supervisor, associate or subordinate) in the licensee's absence. Paste-up Xerox copies and decal replicas of the seal or signature of the licensee are illegal. Reacquaint yourself with Rules 131.138, 131.156(a)(8), (14), and 131.156(b).

**TEXAS STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS  
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