Business Practices & Regulations For the Professional Engineer

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The New York State Society of Professional Engineers, Inc.
Definition
Practice of Engineering

• The practice of the profession of engineering is defined as performing professional services such as consultation, investigation, evaluation, planning, design or supervision of construction or operation in connection with any utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the safeguarding of life, health and property is concerned, when such service or work requires the application of engineering principles & data.

The New York State Society of Professional Engineers, Inc.
NYS Education Law

NYS Education Law – Title VIII –

Article 130  General Provisions – All Professions

Sub-article 1 – Introductory Summary
Sub-article 2 – State Management
Sub-article 3 – Professional Misconduct
Sub-article 4 – Unauthorized Acts

Article 145, Specific regulations for Professional Engineering & Land Surveying
Rules of the Board of Regents
Part 29, Unprofessional Conduct – All Professions

Regulations of the Commissioner of Education

Business Laws
Practice & use of the title Professional Engineer

In the State of New York, professional licensure and registration is required to practice engineering and utilize the title “Professional Engineer”.

The New York State Society of Professional Engineers, Inc.
Practice & use of the title Professional Engineer

When an individual successfully completes the licensure requirements, they are awarded a professional license. The license is valid for life unless it is surrendered or revoked following disciplinary action by the Board of Regents.
Licensure vs Registration

To practice the profession, current registration, renewable every three (3) years with the New York State Education Department is required. Education Law clearly states that only a person licensed or otherwise authorized shall practice engineering or use the title “Professional Engineer”.

The New York State Society of Professional Engineers, Inc.
Permissible Business Entities

- Sole Proprietor
- Professional Services Corporation - PC**
- Professional Limited Liability Companies - PLLC**
- Professional Partnerships**
- Professional Limited Liability Partnerships**

** All officers, members, partners, shareholders or directors must be licensed for the entity to legally provide engineering services.
Permissible Business Entities

The Offering of Multiple Design Services:

Multiple professional design services (disciplines) may be practiced by a Professional Service Corporation (PC), Professional Service Limited Liability Company (PLLC), or Registered Limited Liability Partnership (LLP).
PERMISSIBLE
BUSINESS ENTITIES

The Offering of Multiple Design Services:

These are limited to the design professions licensed pursuant to Article 145, 147 and 148 (engineering, land surveying, architecture, and landscape architecture).

The New York State Society of Professional Engineers, Inc.
The Offering of Multiple Design Services:

PC – A Domestic Professional Service Corporation may provide multiple services in the design professions provided that there is a shareholder, director, or officer licensed and currently registered to practice each of the professions which the corporation is being organized to practice.
Permissible Business Entities

The Offering of Multiple Design Services:

PLLC – A Professional Service Limited Liability Company may provide multiple services in the design professions provided there is a manager/owner licensed in New York State to practice every professional service offered by the PLLC.
The Offering of Multiple Design Services:

LLP – A Registered Limited Liability Partnership may provide multiple services in the design professions provided that there is a partner licensed in New York State to practice every professional service offered by the LLP.
Permissible Business Entities

New Business Entity

• Chapter 550 of the Laws of 2011 amends the Business Corporation Law and the Education Law to authorize a new type of professional service corporation - "Design Professional Service Corporation", or "D.P.C."
Permissible Business Entities

Design Professional Service Corporations can offer an ownership interest in the corporation to non-licensees. This new law requires that greater than 75% of the stock be owned by licensed design professionals, greater than 75% of the directors and officers be licensed design professionals, and that the largest single shareholder be a licensed design professional. The president, chief executive officer and the chair of the board of directors also must be licensed design professionals. Please see current regulations for this new type of corporate structure.

The New York State Society of Professional Engineers, Inc.
Permissible Business Entities

In general can a General Business Corporation (INC) provide engineering services??

NO!! With 1 exception.

Only general business corporations that on April 15, 1935, and continuously thereafter, have lawfully engaged in the practice of professional engineering in New York State and whose chief executive officer is a licensed professional engineer under the laws of the State of New York (often referred to as “grandfathered” corporations).

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Permissible Business Entities

These corporations must remain in full compliance of Education Law; section 7209(6.) or risk losing their ability to offer professional engineering services.

No other entity or individual except those described in the preceding may practice professional engineering in New York State.
Section 7210 of the NYS Education Law requires that all business entities (not individual licensees) legally permitted to provide professional engineering services in New York State obtain a “Certificate of Authorization” from the State Education Department.
The law also allows, but does not require, licensed individuals who are legally permitted to provide professional engineering services in New York State as sole proprietors to obtain a “Certificate of Authorization”.

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Certificate of Authorization

• A “Certificate of Authorization" shall authorize such individual, corporation, limited liability company, limited liability partnership, partnership or joint enterprise to provide Professional Engineering services for three years from the date of issuance, subject to, as otherwise prescribed by law, the supervision of the Regents of the University of the State of New York
Certificate of Authorization

This includes the power to discipline and impose penalties in the same manner and to the same extent as is provided with respect to individuals and their licenses and registration pursuant to this title.

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Certificate of Authorization vs Certificate of Authority

• A Certificate of Authorization is issued to an existing business entity giving the existing entity permission to practice Professional Engineering in NYS.

• A Certificate of Authority is issued by the State Education Department to a proposed business entity for filing with the NYS Department of State attesting that all members/directors/managers of the proposed business entity are authorized to practice the profession.
Certificate of Authority

Generally, education Law restricts the practice of a profession to individuals who are licensed or otherwise authorized to provide professional services and require that the delivery of such professional services be provided only by authorized individuals or entities authorized to employ licensed professionals or otherwise qualified persons.

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Certificate of Authority

To properly set up a business entity to provide Professional Engineering services in The State of NY the following must be done:

• The filer must submit a fully executed Certificate of Incorporation filed under Section 1503 or Articles of Organization filed under Section 1203 of the New York State Business Corporation Law.
Certificate of Authority

• NYS Education Dept. will then attach a Certificate of Authority that gives authorization to the PLLC (LLC) to practice the stated profession and attests that all member/managers of the proposed professional limited liability company are authorized to practice such profession and return it to the filer.
Certificate of Authority

- The filer must then submit both documents to the New York State Department of State for incorporation.
- Upon filing with the New York State Department of State, the filer is required by law to submit to the Education Department a Certified Copy of the Articles of Organization. A certified copy must be requested and obtained from the Department of State at the time of filing.
- The "true" certified copy must then be mailed to the NYS Education Dept.
Congratulations you can now legally practice engineering in the State of New York.
Every New York State licensed and registered Professional Engineer must complete 36 hours of continuing education during each three-year registration period unless you satisfy the requirements of the public sector exemption outlined in the continuing education regulations.
CE Exception

• On December 31, 2003, the licensee was directly employed on a full-time basis by NYS and related agencies, in a position requiring licensure and is represented by a collective bargaining unit or designated management or confidential pursuant to Article 14 of the Civil Service Law at all times when so employed.
Professional Practice

NYS does not issue discipline specific licenses. As a licensed professional engineer, you are required to practice within your authorized scope of practice, as defined in the Education Law, Commissioner’s Regulations and Rules of the Board of Regents.
Business Practices

• The Rules of the Board of Regents define as unprofessional conduct any practice by a professional engineer that is beyond the licensee's scope of competence. Therefore, if you are not competent to provide a service, even one that falls within the legal scope of practice for your profession, you may not provide that service.

The New York State Society of Professional Engineers, Inc.
Consumers Rights:

All consumers of services offered by New York licensed professionals have the legal right to:

• Receive competent professional services.
• Refuse any service offered.
Consumers Rights:

• Verify the credentials of licensed professionals and to know the names and titles of licensed professionals who provide service.

• Receive clear explanations of the services being offered or provided and how much they cost.
Business Practices

Consumers Rights:

- Know what client records will be maintained and how to obtain copies; recognizing that personally identifiable information normally cannot be revealed without the client’s consent.
Consumers Rights:

• File a complaint with the State Education Department about a licensed professional or an unlicensed practitioner; and

• Request and be provided a reasonable accommodation to access professional services, if a person with a disability.
Section 7209 of Article 145 of the State Education Law requires every professional engineer to have a seal. It does not specify the type of seal to be used, with an embossing seal, rubber stamp or electronic version all being acceptable to the Department and the State Board for Engineering and Land Surveying.
Business Practices

Professional Seal & Signature

A professional engineer is required to sign and seal documents. In general, all plans, specifications and reports prepared by the professional engineer or by a full-time or part-time subordinate under their supervision, shall be signed and sealed when filed with public officials.

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Professional Seal & Signature

In addition, whenever a document is signed and sealed, a stamp is required with appropriate wording warning that “it is a violation of this law for any person to alter any document that bears the seal of a professional engineer, unless the person is acting under the direction of a licensed professional engineer.”
If a document bearing the seal of an engineer is altered, the altering engineer shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.
Professional Seal & Signature

• The seal and signature of a licensee on a document indicates that the licensee takes professional responsibility for the work and to the best of the licensee’s knowledge and ability, the work represented in the document is accurate and,
Professional Seal & Signature

in conformance with applicable codes at the time of submission and has been prepared in conformance with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare.
Electronic Seal & Signature

NYS allows the use of an electronic signature with the same validity and effect as the use of a signature affixed by hand. An electronic signature is an electronically generated identifier that is unique to the person using it. The Electronic Signature and Records Act (ESRA) defines what constitutes an electronic signature in New York State and describes its specific uses and limitations.
Sealing work prepared by others:

Sect. 29.3(a)(3) requires that when a licensee reviews work prepared by others, a thorough written evaluation of the work must be prepared and retained by the licensee for a period of not less than six years. This report shall include and address:
Sealing work prepared by others:

- A thorough written evaluation of drawings and specifications; reports; design calculations and references to applicable codes and standards against which the work was checked.
Sealing work prepared by others:

- The report shall identify the common name of the project; owner of the project and/or the client; the preparer of the documents; date of evaluation; documents reviewed, with listing of dates of issue.
Sealing work prepared by others:

• The report shall include conformance with applicable codes including, but not limited to: town, city, state and federal codes; appropriate professional standards (ASME, IEEE, ASTM, etc.).
Sealing work prepared by others:

The sealing of work prepared by others can be considered appropriate (and not unprofessional conduct) under limited circumstances. These would include but are not limited to:

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Sealing work prepared by others:

- Construction documents prepared by an owner or his unlicensed employee, where the proposed project is to be built for the owner, not for a third party.
Sealing work prepared by others:

- Construction documents owned by an individual, such as those purchased through the mail from an out-of-state business entity. Frequently these would be plans for a house or pre-engineered building for the purchaser's occupancy.
Sealing work prepared by others:

Such documents must be reviewed by a NYS Professional Engineer as described below and made site-specific.
Sealing work prepared by others:

After review (i.e., clarity after all revisions or additions have been made), the professional engineer shall incorporate such documents into the set of documents to be submitted to the appropriate authority, and it shall be signed and sealed by the professional engineer.
Sealing work prepared by others:

- Engineering documents prepared by a corporation for franchisees, such as fast-food chains. In such case the documents shall be reviewed by a New York licensed professional engineer as described below and made site-specific. All safety-related aspects should be clarified, and all necessary site work information should be clearly provided.
Sealing work prepared by others:

After the review (i.e., clarity after all revisions or additions have been made), the professional engineer shall incorporate such documents into the set of documents to be submitted to the appropriate authority, and it shall be signed and sealed by the professional engineer.
Sealing work prepared by others:

- Engineering documents for prefabricated and pre-engineered devices and structures may also be reviewed and sealed by New York State Licensed Professional Engineers.
Sealing work prepared by others:

In the review process the PE is responsible for verifying that the device or structure has been designed to meet or exceed the code requirements for the particular site on which the device or structure is to be used or erected. Typically the PE or his/her consultants may provide the necessary site specific design work for the project.
Sealing work prepared by others:

• In signing and sealing work prepared by others, the licensee may correct, alter, or add to the existing documents or prepare additional documents to address items found inappropriate or missing.
Business Practices

Sealing work prepared by others:

When the scope of review is limited to individual aspects of the work, the licensee should indicate this by noting such on the signed & sealed documents. The altering engineer shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.
Sealing work prepared by others:

When the documents meet the appropriate standards, they may then be signed and sealed by the licensee. A licensee who seals and signs the documents may be seen as accepting all responsibility for the work as though the licensee had personally prepared all documents.
Design Delegation: (Definitions)

Participation as a delegator or delegatee in delegating or accepting delegation, through an intermediate entity not authorized to provide professional design services, of specifically defined work involving the performance of a design function, requiring a professional license, under the following terms, conditions and limitations:
Business Practices

• Design Delegation:

• The Principal Design firm should convey in a manner the firm deems most appropriate, to the project owner, the contractor and the subcontractors, the full scope and nature of the project and those elements being delegated for the design by another licensee.
Business Practices

Design Delegation:

• Such specifically defined design work shall be limited to project components ancillary to the main components of the project. (ANCILLARY ??).
Design Delegation:

- The design function shall be required to be performed in accordance with performance specifications established by the delegator. The Architect, Professional Engineer, Land Surveyor or Landscape Architect of Record (the delegator) shall provide performance specifications in writing for the delegated components or systems.
Business Practices

• Design Delegation:

• The delegator must provide sufficient information, in writing, for the delegatee (the licensee to whom the work is delegated) to understand the scope and nature of the delegated work and its connection to the general design, and may include, but is not limited to, technical data, loads, references to the American Society for Testing and Materials and other performance standards.
Design Delegation:

• The delegatee shall be required to be licensed or otherwise legally authorized to perform the design work involved and shall be required to sign and certify any design prepared.
Business Practices

- Design Delegation:
- “Certify means a written statement by a licensee confirming responsibility for the work and attesting that the work prepared meets the specifications (as well as conforming to governing codes applicable at the time the work was prepared), and conforms to the prevailing standards of practice.”
Business Practices

- Design Delegation:
  - The design professional to whom the design function has been delegated (the delagatee) shall design the component or system in accordance with the performance specifications. After carefully reading the performance specifications, the delegatee should make any requests for clarification in writing to the design professional of record through the Contractor/Subcontractor.
Design Delegation:

- The delegator shall be required to review and approve the design submitted by the delegatee for conformance with the established specifications and parameters and such determination shall be in writing;
Business Practices

Design Delegation:

• The delegator shall be required to determine that the design prepared by the delegatee conforms to the overall project design and can be integrated into such design. The Design Professional of Record shall be required to provide written notification of the decision or the submittal may be so marked (Approved; Disapproved; Revise/Resubmit). If not approved, a clear explanation should be provided. and such determination shall be in writing.

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Design Delegation: (Definitions)

Delegator means a primary design team or team of design professionals which may be composed of professional engineers, land surveyors, architects and landscape architects acting either alone or in combination, licensed and registered in accordance with Articles 145, 147 or 148 of the Education Law, and authorized to provide the services being delegated.
Design Delegation: (Definitions)

Delegatee means a design professional, licensed and registered in accordance with Articles 145, 147 or 148 of the Education Law, who is employed or retained by the intermediate entity to produce design work in compliance with the performance requirements and parameters specified by a delegator.
Design Delegation: (Definitions)

Intermediate entity means a person or entity, typically a contractor or subcontractor, responsible for performing the work under the contract for construction.
Design Delegation: (Definitions)

Certify means a written statement by a licensee confirming responsibility for the work and attesting that the work prepared meets the specifications (as well as conforming to governing codes applicable at the time the work was prepared), and conforms to prevailing standards of practice.
Design Delegation: (Definitions)

An intermediate entity (ie contractor or sub-contractor) can only delegate design work for any task that is ancillary (Means & Methods) (ie Temporary Shoring, Rigging)

In all other design delegation, the delegator must be a NYS Licensed Design Professional.
Test Your Knowledge:

1) NYS Licensed PE legally authorized to practice in NY, may perform:
   A) Home Inspections
   B) Engineering for a project in NYS while residing outside NYS.
   C) Topographic Land Surveys
   D) Engineering in multiple disciplines within an acquired knowledge base.
   E) All of the above
Business Practices

Test Your Knowledge:

1) Which of the following does not constitute unprofessional conduct:
   A) Fee splitting to or from a third party.
   B) Newspaper ad indicating fixed fees and pricing.
   C) Practicing beyond your competency without adequate supervision.
   D) Willfully making a false report.
   E) Delegating responsibilities to an unqualified person.
Test Your Knowledge:

1) NYS Licensed PE can legally provide engineering services to a project owner through a contractor. (True or False)

2) NYS Licensed PE can legally provide engineering services to a project owner through a expeditor. (True or False)

3) NYS Licensed PE can legally provide engineering services to a project owner through NYS Licensed RA or PE. (True or False)
Resources

SED Office of the Professions:
www.op.nysed.gov
Laws, Rules & Regulations

NYSSPE: www.nysspe.org
Legislative Issues

NSPE: www.nspe.org
Code of Ethics
Legal and Ethics Issues