

New cease and desist policy enforced by P.E. Board

Written by: Elizabeth Kiefner Crawford, the new Board Director for Indiana's State Board of Registration for Professional Engineers, the regulating body for approximately 13,000 licensees in the State of Indiana. She is a graduate of Indiana University and Indiana University School of Law-Indianapolis.

In July 2010, Indiana Code § 25-1-7-14 came into effect. This statute, found under the heading "Cease and Desist Orders", allows the Board the opportunity to police unlicensed practice.

Prior to this rule, the Board had no jurisdiction over those practicing engineering without a license in the State of Indiana. Previously the remedies available allowed the Office of the Attorney General or a county prosecutor to request an injunction in a trial court, pursue the action through a prosecutor as a Class B misdemeanor, or seek protection through the Deceptive Consumer Sales Act, or allowed an individual in a county where the unlicensed practice allegedly took place to

file suit. These processes, while meaningful if utilized, took a significant amount of time which is not the objective when seeking to quickly stamp out unlicensed practice.

The new Cease and Desist statute is comprised of a multiple step process which involves multiple parties. If the Board believes that a person is engaged in unlicensed practice, it may file a complaint with the Office of the Attorney General for a mandatory investigation under IC § 25-1-7-14 (a). After investigating, the Office of the Attorney General may file a motion for a Cease and Desist Order, which the Board will review, and if it considers it appropriate, will set the matter for an Order to Show Cause hearing before the Board.

An Order to Show Cause ("OTSC") hearing allows each side to present evidence as to why the individual should or should not be licensed in the State of Indiana. The OTSC hearing follows the requirements of the Administrative Order and Procedures Act under Indiana Code § 4-21.5. Once the OTSC hearing occurs, the Board deliberates and votes as to whether a license was necessary for the individual's alleged practice. If

the Board decides no license was necessary, then the matter is dismissed. If the Board decides licensure was necessary, the Board issues a Cease and Desist Order which is enforceable in any circuit or superior court. If the individual continues to practice after the Cease and Desist Order is issued then they are subject to contempt of court.

It is important to note that the Cease and Desist Order does not absolve anyone of potential criminal prosecution.

This process provides the Board with a new tool which will allow it have a say in identifying and curbing unlicensed practice in a timely manner. After all, the Board's primary duty is to protect the health, safety, and welfare of the consumers of the State of Indiana.

If you encounter an individual who you believe is practicing unlicensed, contact me directly or write a letter to the Board including all relevant details. Should you have any questions about this article, please contact me via phone, (317) 234-3022 or via email at pla10@pla.in.gov.

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