Representational Ethics: The Risks of Inaccurate Marketing

The foundation of the value of a professional service firm is trust and value. The firm’s brand, whether engineer or architect, is based on the positioning and delivery of service grounded in current expertise and experience—and that of its staff—conveyed to the client, and potential client, accurately and honestly.

As with any organization, over time, staff changes, experience grows, and expertise evolves. With each opportunity to tell their story, a professional service firm has an obligation to the potential client and the public to communicate their relevant ability, approach, and experience truthfully.

Recently, the Board reviewed a case that alleged an individual held themselves out as a licensed Architect through the publication of a project in a noted trade publication. The case alluded that this person was practicing and marketing architectural skills without being properly licensed in Nebraska to do so. Upon further review and correspondence with the individual, the Board learned that the use of the title “architect” was misappropriated by the firm’s marketing department while preparing the article for print. The individual is currently seeking licensure, and following the necessary steps, but hasn’t yet completed the process. The Board dismissed the case, but decided to address the issues that come with misrepresentation of an individual or firm when using protected titles. This is becoming a more common occurrence in the Board’s view.

The Board has reviewed numerous cases of misrepresentation in regards to protected titles and work of individuals and firms. To help mitigate the occurrences, the Board recommends firms and individuals take extra care when marketing their skills and work to the public.

Some practices firms and individuals can practice to avoid improper use of titles and work are:

- Using a staff directory to accurately state titles of individuals;
- Check team member resumes to ensure proper attribution of titles;
- Specifying past projects, including whether the individual worked on projects while employed elsewhere;
- Listing the states in which individuals and firms are licensed to avoid confusion; and
- Check state-specific requirements when pursuing or bidding on work in other jurisdictions.

Conveying incorrect information (i.e. misstating professional licensure or certification status) is unethical as it can frame a client’s expectations based on false or misleading information.

It is a violation of Nebraska law to attribute the titles “Professional Engineer” or “Architect” to individuals who do not hold such licenses. State law also prohibits advertising work without proper attribution.

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If a company advertises work without properly attributing individuals or firms who worked on the project, then the organization is subject to violations of the E&A Act, specifically under Neb. Rev. Stat. §§ 81-3441 and 81-3442. In these cases, any person or firm may be subject to disciplinary action by the Board. Misrepresentation or misuse of protected titles may lead to a variety of civil penalties, including but not limited to license probation, suspension, and fines.

When applied to marketing of professional service firms, ethics are the values and principles that inform the standards of conduct that organizational leadership and marketing must follow when conducting research, creating advertising collateral, and responding to requests for qualifications and proposals.

The marketing department (and the organization’s leadership) are responsible for properly crediting experience, certifications and professional expertise. Similarly, they are responsible for properly crediting sources of photography, research, and data contained in technical publications and presentations. If an organization does not have an editorial researcher, they should contract one. An outside set of eyes can raise questions that can prevent an inadvertent misstatement of fact.

In addition to the Board’s rules on professional conduct, the American Institute of Architects (AIA), National Society of Professional Engineers (NSPE), and American Council of Engineering Companies (ACEC) all have ethical standards to which they hold their members. When positioning the firm for new work, it may seem easy to stretch credentials to meet a client’s expectations. Neither ethically nor legally is this ever a wise course. The risks far exceed the potential rewards when legal action, censure, and a tarnished brand are the results.

This article was written with the assistance of Craig Park, FSMP5, Assoc. AIA. Craig is a Fellow and past national president of SMPS and recipient of their 2007 Weld Coxe Marketing Achievement Award.

2016 Annual Licensing Ceremony

The Nebraska Board honored new architects and professional engineers who earned their Nebraska certificates on November 4, 2016. The Board invited all newly licensed professionals to the annual Licensing ceremony to receive their certificates and listen to speakers from the Board, AIA Nebraska and NeSPE.
Starting October 15, 2016, Prometric test centers in the U.S. began closely inspecting eyeglasses, jewelry, and other accessories to prevent small recording devices from entering exam rooms. All candidates will be required to remove their eyeglasses for visual inspection by a Test Center Administrator (TCA).

These brief inspections will occur during initial check-in and upon return from breaks. Most types of jewelry are prohibited, with the exception of wedding or engagement rings. Candidates should avoid bringing watches, necklaces, bracelets, or earrings to the test center. Other accessories are subject to inspection, such as headbands, hair clips, ties, cuff links, or scarves. Please note: religious and medical head coverings are permitted. If you have any questions regarding this security measure, please contact Prometric directly.

Lindy Rauscher, NBEA Compliance Officer

The complaints described below presented a question regarding alleged offers to practice engineering. The Board dismissed the cases for lack of probable cause. The Board’s considerations on these cases are outlined below.

Complaints were filed with the Board against several businesses for the alleged unlicensed practice of architecture and engineering. The issue identified in the complaints was that the businesses were listed in a municipal business directory as providing “engineering services”, but the businesses had not been issued a Certificate of Authorization from the Board. The E&A Act, Neb. Rev. Stat. § 81-3442(1)(a), makes it “unlawful for any person to practice or offer to practice architecture or engineering ... without being licensed in accordance with the Act.”

In this light, the question becomes whether participating in the business directory amounts to the practice or offer to practice architecture or engineering. If so, the businesses would be in violation of the Act by engaging in the unlicensed practice of architecture or engineering.

Pursuant to Board Rule 8.1.3, the Board must determine, based on the investigator’s recommendation, whether there is probable cause of a violation of the E&A Act. If the Board determines there is a lack of probable cause, they must dismiss the case. The investigation, recommendation, and Board determination considered the following:

• For those businesses that were not listed in the directory, the case was closed for lack of probable cause.

• Upon review of the instructions provided to directory applicants, it was determined that the business activity categories available to applicants encompass a broad range of services. The “engineering services” category, per the category descriptions, applies to both traditional engineering as well as “engineering consulting services”.

• A conversation with municipal officials that oversee directory applications provided more information on how directory applicants self-identify business categories. Due to the breadth of the business activity categories, oftentimes directory applicants self-identify categories that roughly match their business activities.

• The municipal officials also explained that participating in the business directory merely puts the business on a publicly-accessible list. Directory participants are then eligible for some preferences in the municipal bidding process.

Based on the breadth of the business activity categories and the limited benefits of participating in the directory, the Board determined that the businesses were not in violation of the Act by virtue of participating in the business directory.

A business may be engaged in an offer to practice once they are approached by a client or begin to enter into an agreement to provide engineering or architectural services. The client may identify a business to approach based on the directory. The offer arises once the client and business begin interacting with the mutual goal that architectural or engineering services will be provided. At that stage, the business would be engaged in an offer to practice and would need a Certificate of Authorization issued by the Board.

Upon a better understanding of the circumstances in which the businesses became directory participants and the limited benefits of participation, the Board concluded there was not probable cause that a violation of the Act had occurred.

Note: The Board did not take disciplinary action in these cases pursuant to Neb. Rev. Stat. § 81-3444, so the names of the individuals and firms involved will not be disclosed.

Offer to Practice by Code
Daniel Turner, Ph.D., P.E., P.L.S., began his term as 2016–17 NCEES president at the conclusion of the organization’s annual meeting, held August 24–27 in Indianapolis, Indiana. Turner was a member of the Alabama State Board of Licensure for Professional Engineers and Surveyors from 2009 to 2014 and is now an emeritus member. He replaces outgoing president and Nebraska board member Michael Conzett, P.E., who will remain on the NCEES board of directors as immediate past president.

NCEES members also elected Patrick Tami, P.L.S., of California, president-elect for the 2016–17 term, during the annual meeting.

NCEES welcomed Maurice Bowersox, P.E., of Kansas, and Brian Hanson, P.E., of Alaska, to its board of directors. Bowersox and Hanson will serve two-year terms as vice presidents of the Central Zone and Western Zone, respectively.

Three members are serving the second year of their two-year terms: Gary Thompson, P.L.S., of North Carolina, continues as treasurer; Theresa Hodge, P.E., of South Carolina, returns as Southern Zone vice president; and Roy Shrewsbury, P.S., of West Virginia, continues as Northeast Zone vice president.

NCEES Names new President

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NCEES reduces FE exam fee beginning 2018

The U.S. engineering licensure boards that make up NCEES have voted to lower the price for the Fundamentals of Engineering (FE) exam by $50 to $175 beginning January 2018. The decision was made at the organization’s 95th annual meeting, held in August in Indianapolis, Indiana.

Delegates also priced computer-based PE exams at $375. None of the PE exams are currently administered through computer-based testing (CBT), but the organization is preparing for future transitions to CBT. The new price could take effect as early as January 2018.

Delegates also approved an amendment to the financial policy on exam charges to require that examinees pay NCEES directly for all exams, whether CBT or pencil-and-paper format, beginning May 2017. Direct payment to NCEES is required for all CBT exams. As PE exams move to CBT, the change will provide a consistent payment method during the transition.

“NCEES and its member boards are committed to reducing barriers to licensure,” NCEES Chief Executive Officer Jerry Carter explained. “NCEES wanted to lower the price of the fundamentals exam for engineering licensure to ensure that cost is not a prohibitive factor in starting on the path to licensure.”

Rauscher joins NBEA Staff

Tanna Dittmar, NBEA Public Info. Officer

The Nebraska Board of Engineers and Architects would like to welcome Lindy Rauscher as the new Compliance Officer. Prior to joining the Board, Rauscher worked with First Date Corporation in Omaha in the Anti-Money Laundering division, focusing primarily on compliance policies at casinos and conducting background checks. She studied at the University of Nebraska-Lincoln’s College of Law, taking courses in administrative law, statutory interpretation, and regulatory compliance.

“Lindy’s unique education and experience will greatly benefit the Board’s mission to safeguard life, health, property, and promote the public welfare as Compliance Officer for the Board,” NBEA Executive Director Jon Wilbeck said. “Her background in law will be particularly useful in her role to ensure compliance with the NBEA’s Rules and Regulations.”

The Compliance Officer works primarily on investigating complaints submitted to the Board. In addition, the role involves educational outreach to building officials across the state.

“The compliance and outreach duties of the Compliance Officer position require similar coordination, cooperation and relationship building to the experiences I’ve faced in my previous positions,” Rauscher said. “I’m looking forward to implementing the theories I’ve learned to this role and I am excited for the challenge to apply my legal training to each unique situation.”

Rauscher graduated from UNL with a B.S. in Environmental Restoration Science in May 2012. She earned her Juris Doctorate degree in May 2015. A native of Lincoln, Rauscher currently resides in Omaha.
The following cases were reviewed for compliance by the Nebraska Board of Engineers and Architects, and resolved via the action noted. These summaries are provided for licensee education and information, and should not be interpreted as a full description of the cases described. In cases where disciplinary action was taken by the Board per Neb. Rev. Stat. § 81-3444, the names of the individuals and/or organizations involved are included.

Cases #15.25 & 15.26

Conflict of Interest

Summary: A complaint was filed alleging that an engineering firm’s role as a local City Engineer created a conflict of interest for the firm. The alleged conflict of interest arose wherein the firm was providing City Engineering Services and also performing design and construction administration-phased services on select projects for the City and developers doing business with the municipality.

Action: The City policies and ordinances applicable to the firm’s role as City Engineer were reviewed and discussed informally with the firm and individuals serving in the role of City Engineer. The Board dismissed the case due to lack of probable cause.

Case #16.04

Noncompliance with Laws

Summary: A complaint was filed alleging that an individual was misrepresenting his credentials as an architect on the website of his current employer. The alleged misrepresentation occurred due to the individual’s use of advertising materials, such as renderings and photographs, of a project done by this individual while working at another firm.

Action: The Board dismissed the case following the efforts of the individual and his current employer to correct the misrepresentation and attribute the extent of the architect’s work to the appropriate firm and/or individual.

Case #16.05

Misuse of Seal

Summary: A complaint was filed alleging that structural evaluations, sealed by a licensed engineer, were not prepared by him personally or under his direct supervision. The evaluation included both the licensee’s seal and signature as well as an unlicensed colleague’s signature.

The manner in which the structural evaluations were sealed and signed created confusion in identifying the individual responsible for the work.

Action: The Board dismissed the case upon learning that the evaluations were prepared by the licensee based on on-site measurements and observations made by a colleague as part of their structural inspection business. To prevent confusion in the future, the Board encouraged the licensee to provide a cover letter with each structural evaluation. The cover letter may be prepared by the unlicensed individual, but the structural evaluation should be prepared and sealed by the licensed design professional.

Cases #16.08, 16.10, 16.11, 16.13, & 16.14

Unlicensed Practice

Summary: A complaint was filed alleging that several firms were advertising and providing architectural and engineering services in Nebraska without a Certificate of Authorization issued by the Board. The firms were allegedly advertising and providing professional services by participation in a local municipal business directory of organizations pre-qualified for some municipal bidding preferences.

Action: The process to become a participant in the business directory required that the firms self-identify their business activities from a list of broad categories. Upon qualifying for participation in the business directory, the firms are simply included in the publicly-available directory. The Board determined that participation in the business directory did not constitute an offer to practice architecture or engineering. The Board dismissed the cases due to lack of probable cause.
The University of Nebraska-Lincoln Charles W. Durham School of Architectural Engineering and Construction earned the grand prize in the 2016 NCEES Engineering Award for Connecting Professional Practice and Education. A plaque and $25,000 check was awarded to the team for their submission, 888 Boylston Street-Interdisciplinary Team Design.

The team designed a proposed 17-story mixed-use high-rise building. The main guideline for the project was that the building must be energy efficient according to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers standards.

The jury praised the team for its strong interaction with professional engineers, and the complexity and multidisciplinary aspects of the project.

“This project had so many multidisciplinary aspects. The report was detailed and comprehensive, and clearly conveyed the knowledge and skills learned,” said NCEES Engineering Award jury chair Michelle Rambo-Roddenberry, Ph.D., P.E. “The breadth of interaction the students had with practicing professional engineers was impressive.”

Students were required to create a sustainable integrated design between structural, mechanical, and electrical engineering disciplines with a minimum energy reduction required to meet 50% of the baseline obtained via ASHRAE 90.1-2007 all while ensuring public safety. The design teams produced complete, integrated designs for the 625,000 sq. ft., 17-story mixed use office building at 888 Boylston Street, in Boston, Massachusetts. Each team, guided by professional engineers, architects and other professionals, used an integrated approach to engineering system decisions during preliminary research, schematic design, and design development phases.

The students gained real-world skills through collaborating with multiple disciplines. Using an actual building design project provided an opportunity to consider synthesis and integration outside of theoretical parameters and to form an interdisciplinary approach. Students learned the skills an engineer must develop and possess as they enter the profession.

Dr. Clarence Waters, a UNL architectural engineering professor, and Dan Hahn, S.E.—both of whom worked on the project—accepted the award at the NCEES Annual Meeting in August.

This year marks the second consecutive year that a team from The Durham School has placed in this competition. Last year, a UNL team earned one of the five $7,500 runner-up prizes for its Multidisciplinary Vertical Farm Design entry.
Continuing education and Board Rule 9.2.4

Continuing education is an important aspect of maintaining licensure for engineers and architects so they may stay up-to-date with the latest topics and technologies available. With the parameters of the industry constantly changing, the professional's needs in a continuing education course is subject to change as well.

Recently, the Board implemented a new rule regarding ethical issues of professional practice. Board Rule 9.2.4 calls for one PDH hour of the biennial ACE and ECE requirements must be directly related to ethical practice.

Professional engineers and architects ascribe to the highest standards as set forth by state statutes and the Chapter 5 Code of Conduct to ensure the highest quality and conduct of licensees. Therefore, it is important that all licensees attend ethics-based courses to remain at the standard set by these provisions.

Another aspect of continuing education is ensuring licensees satisfy the biennium requirements set forth by state licensing boards to properly maintain licensure. On the NBEA’s website, the Board has listed requirements necessary for logging CE hours. A CE Log has been posted to help licensees track and maintain their CE hours.

It is the responsibility of the licensee to keep detailed record of his or her CE hours. In the event of an audit, the Board requires the following:

- A log showing the type of activity claimed, sponsoring organization, location, duration, instructor’s or speaker’s name, and unit credits earned;
- Attendance verification records in the form of completion certificates, self-guided report submittals or other documents supporting evidence of attendance; or
- Records of CE activities maintained by AIA, the Professional Development Registry for Engineers and Surveyors, NCEES CPC tracking program, or similar repositories.

The Board recommends licensees maintain their CE records for at least four years.

Rule 9.2.3 Guidelines

Web-based offerings other than those provided by

1. International Association for Continuing Education and Training (IACET) approved providers,
2. Institutions of higher education that have an accredited program in architecture or engineering,
3. Professional engineering or architectural societies,
4. Technical societies and associations recognized at a national level, or
5. Government agencies will only qualify for continuing education under self-guided report submittals and are limited to 25% of the required hours for an architect or professional engineer.
Cabin Court

That’s what they were called in the ‘forties, before there were motels. Next to the highways, rows of one-room cabins, all of them alike, and here’s a postcard with a cabin court printed in color, a chromolithograph with the printer’s registry a little blurred as if we are speeding past, and of course we are, and were, leaving the ‘forties, ‘fifties, ‘sixties behind us as fast as we could. But let’s pull off for a minute anyway, and look at all the possibilities: a dozen numbered doors we might have been handed a key to, knobs hot from the summer sun, and inside, air before it was conditioned, with one small window propped open with a plastic water glass, a printed cotton curtain drifting, and a desk with a Bible and a few free postcards waiting, with a picture of then, where you happened to be.

Ted Kooser

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Ted Kooser, former U.S. Poet Laureate (2004-2006), and recipient of the 2005 Pulitzer Prize for Poetry, a Nebraska Poet.


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