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TBPE

January 3, 2006

Texas Board of Professional Engineers
Policy Advisory
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Austin, TX 78741
VIA Fax: (512) 442-5715

**in re: Policy Opinion**

Dear Board:
We are asking that the source of this request (ie, our identification) be left anonymous.

We have questions, and refer you to the Law as is found on your website.

(c) The practice of engineering includes:
(1) consultation, investigation, evaluation, analysis, planning, engineering for program management, **providing an expert engineering opinion or testimony**, engineering for testing or evaluating materials for construction or other engineering use, and mapping; (emphasis added)

e) This chapter does not:
(2) **prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal,** subject to the Board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering; (emphasis added)

## Background

Insurance Company X insures Speedy Computer Company, a manufacturer of computers. A fire occurs, and X hires an out of state person (Jones) to perform an engineering analysis of the fire; many think that the fire was caused by a Speedy computer. Similarly, other persons in Texas, who are licensed by the State (TBPE) are also engaged by other interested parties to investigate the fire possibly caused by Speedy. Jones is performing the same work as the in state licensed engineers. That work includes gathering of data, advising the insurance company X of how to defend any anticipated claims, issues a report of findings, gives a deposition, attends mediation, and then possibly attends a trial to testify if the case against Speedy does not settle.

It would appear to us that the work of Jones (investigating, gathering data, preparing a report for use in mediation and evaluating the claim, advising the insurance company on how to evaluate the case) is all forensic engineering and as such, requires a Texas

license by the out of state practitioner. In that the report (as an example) will have multiple uses (as opposed to the **SOLE** purpose of being introduced before a tribunal, as cited by the Law), the preparation of the report and other tasks are all the practice of engineering, and thus require a license.

Our questions are as follows:

1.) Does Jones have to have a TBPE license to investigate, advise his insurance client, work at the fire scene, analyze data, and other tasks that are normally carried out by forensic engineers?

2.) As engineers, licensed by TBPE, are we required to report such illegal practice, assuming it is illegal?

3.) Given that there usually isn't a lawsuit until all of the analysis is carried out, it would appear that ANY forensic engineering work done **prior** to litigation (which may or may not ensue) would be illegal, in that one could not claim its sole purpose was to place work product before a court or tribunal. Is this a correct reading of the law?

4.) If an engineering report (as an example) is used for multiple uses, it would appear that its sole use is not litigation, and as such, its preparation requires a PE license. Is this reading of the law correct?

Thank you

TEXAS BOARD OF PROFESSIONAL ENGINEERS

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