

Forensic Engineering Policy Advisory Request
February 23, 2006

Background:

The agency received an anonymous request to consider issuing a policy advisory regarding the practice of forensic engineering. The request included four specific questions (see linked request letter dated January 3, 2006) regarding the practice of forensic engineering.

Definition of Forensic Engineering:

From the National Association of Forensic Engineers website:

Forensic engineering is the application of the art and science of engineering in the jurisprudence system, requiring the services of legally qualified professional engineers. Forensic engineering may include the investigation of the physical causes of accidents and other sources of claims and litigation, preparation of engineering reports, testimony at hearings and trials in administrative or judicial proceedings, and the rendition of advisory opinions to assist the resolution of disputes affecting life or property.

Statute Language, Texas Engineering Practice Act (Act):

The following excerpts from the Act refer to expert engineering testimony, testimony and document preparation.

§ 1001.003. Practice of Engineering

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;

§ 1001.004. Legislative Purpose and Intent; Liberal Construction of Chapter

(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;

Analysis:

The definition found for forensic engineering emphasizes that the work product of a forensic engineer is to be used mainly in the jurisprudence system. The Act refers to testimony and document preparation for placement as evidence in the two cited sections reprinted above. Since forensic engineering is not exclusively practiced within the jurisprudence system, the issue must be considered from within the court system and outside.

Within the jurisprudence system, the Act allows an unlicensed person to provide testimony and prepare documents to be placed in evidence. It would appear that an unlicensed person could not be sanctioned by the Board for providing written evidence and testimony of any kind to a court according to § 1001.004 (e)(2).

Outside the jurisprudence system, there does not appear to be any provision for an unlicensed person to provide engineering services to the public.

Response:

The following answers the anonymous requestor's questions:

1. The committee does not believe that Mr. Jones has to have a Texas engineering license if the primary reason that he is employed by Insurance Company X is to provide testimony should the need arise in any possible litigation that may result from the fire. In other words, if he is hired by Insurance Company X to be its expert witness should the need arise, then the exemption in section 1001.004(e)(2) applies to him.
2. Not applicable.
3. See response to 1 above.
4. If Mr. Jones is employed by Insurance Company X to provide testimony in any litigation that may result from the fire and Mr. Jones prepares an engineering report solely for use as an exhibit or document in any such possible litigation, then the committee doesn't believe Mr. Jones has to be licensed by the Board in order to prepare such report. The fact that the insurance company may use the engineering report for other purposes does not, in our opinion, change the fact that the engineering report was prepared by Mr. Jones solely for use as an exhibit or document in any resulting litigation.