

Construction Certifications By Way Of Misleading Statements

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This article is the first in a series intended to address the practice of engineers providing illegitimate construction certifications. This particular article focuses on engineers providing construction certifications that include misleading statements or omissions intended to facilitate a fallacious conclusion on the part of the permitting authority.

Currently there exists the practice of contractors obtaining plans and/or reports prepared by one engineer, using those plans and/or reports to obtain a permit, performing the work that the contractor choose to and then hiring a second engineer to “certify that the work was completed”. One portion of the construction industry where this practice is known to exist is sinkhole remediation. Setting aside the efficacy and legality of the contractor’s actions, this article is intended to address the role that the certifying engineer plays in suborning such activity.



Construction Certifications

The construction certification that is sought by the contractor is required to satisfy the permit requirements of Chapter 1 Section 107 of the Florida Building Code. Recognizing that an engineering certification constitutes an affidavit under the Florida Building Code, the specific passages that relate to this requirement are as follows:

FBC 107.4 Amended Construction Documents. *Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.*

FBC 107.6 Affidavits. *The building official may, without any examination or inspection, accept such affidavit, provided the architect or engineer who made such affidavit agrees to submit to the building official copies of inspection reports as inspections are performed and upon completion of the structure ... that the structure ... has been erected in accordance with the requirements of the technical codes. Where the building official relies upon such affidavit, the architect or engineer shall assume full responsibility for compliance with all provisions of the technical codes and other pertinent laws and ordinances.*

Therefore, when an engineer issues a certification, or building code compliant affidavit, that engineer has an obligation to clearly state whether the work has been installed in accordance with the approved construction documents.

The Engineer's Role – Obligations

When evaluating an engineer's role in such an enterprise, one begins by examining the service or deliverable that the engineer provided and then evaluating the standard of care exercised in producing it. Beginning with the certification that is produced, Florida Administrative Code **61G15-29.001** titled: *Certification Definition, Procedures, Prohibitions* discusses what is required of an engineer when providing a signed and sealed certification. Of particular note are the following passages:

61G15-29.001(2) *When an engineer is presented with a certification to be signed and sealed, he or she shall carefully evaluate that certification to determine if any of the circumstances set forth in subsection (3) would apply. If any of these circumstances would apply, that engineer shall either: (a) modify such certification to limit its scope to those matters which the engineer can properly sign and seal, or (b) decline to sign and seal such certification.*

61G15-29.001(3) *Engineers who sign and/or seal certifications which: (a) relate to matters which are beyond the engineer's technical competence, or (b) involve matters which are beyond the engineer's scope of services actually provided, or (c) relate to matters which were not prepared under engineer's responsible supervision, direction, or control; would be subject to discipline pursuant to Rule 61G15-19.001(6), F.A.C.*

In other words, when issuing a certification the engineer is obligated to clearly state the limits on his or her scope. Also, keep in mind that **61G15-30.002** and **61G15-30.003** deal with engineering documents and the minimum requirements for engineering documents. With respect to certifications, these sections state that when the engineer does not intend to accept responsibility for elements, the engineer shall clearly note on the documents the extent of his responsibility.

Therefore, when an engineer issues a certification, that engineer has an obligation to clearly state the limits on his or her scope as well as any matters that the engineer does not intend to accept responsibility for.



The Engineer's Role – Standard of Care

The next step in evaluating an engineer's role in such an enterprise is to consider the standard of care the engineer exercised. In the case where the engineer chooses to omit or misrepresent the engineer's scope or any material facts, one must consider Florida Administrative Code **61G15-19.001**. This passage, titled: *Grounds for Disciplinary Proceedings*, establishes practice rules by way of outlining and discussing prohibitions. Of particular note are the following passages:

61G15-19.001(6) *A professional engineer shall not commit misconduct in the practice of engineering. Misconduct in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall include, but not be limited to: (b) Being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether or not under oath or omitting relevant and pertinent information from such report, statement or testimony when the result of such omission would or reasonably could lead to a fallacious conclusion on the part of the client, employer or the general public;*

Therefore, when an engineer issues a certification, that engineer has an obligation to avoid untruthful, deceptive, or misleading statements. In addition, that engineer has an obligation to avoid omitting relevant and pertinent information that would lead to a fallacious conclusion on the part of the building department.

Conclusion

Simply put, when an engineer is hired, especially after work has been completed, to issue a certification stating that the work outlined within a permit has been completed, that engineer has an obligation to clearly state the limits on his or her scope as well as any matters that the engineer does not intend to accept responsibility for. Further, since such a certification is clearly intended to be turned over to the permitting authority, that engineer has an obligation to clearly state whether the work has been installed in accordance with the approved construction documents, (permitted plans). To fail to do so could lead to a fallacious conclusion on the part of the building department thereby resulting in the engineer having committed misconduct in the practice of engineering.

To: Building Department

Re: Certification

I hereby certify that the contractor's work is complete.

Signed: Certifying Engineer