

# PACIFIC NORTHWEST DESIGN PROFESSIONAL LEGAL UPDATE

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Construction  
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## Direct Supervision of Unlicensed Employees: Current Law & 2009 Proposed Rule Changes

Under RCW 18.43.010, if you practice engineering or land surveying in Washington, you must hold a current license or registration issued by the Department of Licensing. Most licensed engineers and land surveyors employ unlicensed technicians or other employees to help complete engineering or surveying projects for clients. Under RCW 18.43.130, delegating work to an unlicensed employee or a subordinate is permissible only if:

*Such work does not include final design or decisions and is done under the **direct responsibility, checking, and supervision** of a person holding a certificate of registration....*

Under RCW 18.43.070, it is impermissible for a licensed engineer or land surveyor to stamp or seal drawings, specifications, plats or reports unless they were prepared by that licensed individual or under his or her “direct supervision.”<sup>1</sup>

It is a “fundamental canon” of professional conduct and practice that:

*Registrants shall seal only documents prepared by them or under their **direct supervision** as required by RCW 18.43.070.*

WAC 196-27A-020.<sup>2</sup>

The Washington Board of Professional Engineers and Land Surveyors (the Board) has promulgated regulations to define “direct supervision.” Currently, WAC 196-25-070 provides:

***Direct supervision** is a combination of activities by which a licensee maintains control over those decisions that are the basis for the finding, conclusions, analysis, rationale, details, and judgments that are embodied in the development and preparation of engineering or land surveying plans, specifications, plats, reports, and related activities. **Direct supervision** requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.*

*Communications between the licensee and those persons who are performing the work include, but are not limited to, use of any of the following ways: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology: Provided,*

## Direct Supervision: Current Law & 2009 Proposed Rule Changes (con't)

*That the licensee retains, maintains, and asserts continuing control and judgment.*

This definition of “direct supervision” has led to questions about how much of the substantive underlying engineering or surveying work must be personally performed by the licensee before he or she can properly sign and stamp the end product.

The NSPE Board of Ethical Review, a panel of engineering ethics experts, has considered this question on several occasions. In BER Case No. 90-6, the panel stated that under the NSPE Code of Ethics, a licensee will be found to have met the “direct supervision” requirement, even if he or she did not personally prepare the plans or specifications, as long as he or she “checked and reviewed” them “in some detail.”

The concept of a “detailed check and review” has been the general understanding for approximately 20 years. It also has profound implications for a variety of day-to-day operational decisions, including the stamping of drawings by specialty license holders, such as structural engineers, the level of review necessary when taking over a project from another firm, integrating “off-shore” design work into project deliverables, and other common scenarios.

### 2009 PROPOSED RULE CHANGE

This definition of “direct supervision” in Washington may soon change dramatically. The Board is currently considering amending the definition of “direct supervision” in a way that could impact the way you provide engineering and land surveying services to clients. Under a proposed rule to be considered by the Board on July 29, 2009, WAC 196-25-070 would be changed as follows:

***Direct supervision*** means the actions by which a licensee maintains control over those decisions that are the basis for the findings, conclusions, analyses, rationale, details, and judgments required for the preparation of engineering or land surveying plans, specifications,

*plans, reports, and related activities.*

*These actions may include, but are not limited to: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology. Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision. Mentoring is not direct supervision. Drawing or other document review after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.*

The last sentence of this proposed rule appears to depart from the NSPE Board of Ethics Review approach to “direct supervision” in that it would require you to have direct involvement in the design process. Checking the calculations and drawings prepared by others, even if that review were a detailed review, would not be sufficient to allow you to stamp the final plans and specifications.

If you have comments or concerns about the proposed rule change being considered by the Board, submit your comments in writing to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers & Land Surveyors, P.O. Box 9025, Olympia, Washington 98507-9025, or email to: [engineers@dol.wa.gov](mailto:engineers@dol.wa.gov) by **July 27, 2009**.

Beth M. Andrus

1. Under the Model Law adopted by the National Council of Examiners for Engineering and Surveying (NCEES), it would be grounds for disciplinary action if a licensed engineer or land surveyor signed or sealed a document that had not been prepared by the licensee or under the licensee’s “responsible charge.” NCEES Model Law at § 150.10(A)(10) (August 2008). NCEES defines “responsible charge” as “direct control and personal supervision of engineering or surveying work,” Model Law at § 110.20(E), but does not further define or describe “direct control and personal supervision.”

2. This language is similar to that found in the NCEES Model Law Rules of Professional Conduct at § 240.15(B)(2)(August 2008). See also National Society of Professional Engineers Code of Ethics, at § II.2.b which states Engineers shall not affix their signatures to any plans or documents not prepared under their “direction and control.”