

## **Empowered to Practice**

By Kristine A. Kubes, J.D.

Public Member and Vice Chair

Today, I am writing to you not only as a public member and Vice Chair of the Board, but also in my capacity as a construction attorney who primarily represents design professionals, such as you. At Meagher & Geer, PLLP, I defend design professionals and contractors when they become involved in litigation. I also proactively counsel my clients about contracts, project management issues, best practices, risk management, etc. Given this background, I was honored to be appointed to serve on the Board, as it so directly relates to the professionals that I care for every day. I refer to this chapter of my professional life as my “Book-End Experience” – when I have the privilege of working with the formative issues that relate to the licensing of your specific disciplines here on the Board, as well as the liability issues that arise from your practices. I have found that each experience informs the other, and offer you here a few lessons learned:

### *Lesson One: Take charge of your own license*

You would be surprised how often we see issues arise because of a design professional’s failure to comply with licensure requirements. If I can give you a word to motivate and empower you, let it be this: The single best way that you can protect your license and limit your professional liability is to realize that you are the only person responsible for your licensure. Minnesota Statute Sections 326.02-.15 and Minnesota Rules Chapters 1800 and 1805 are your reference and guidance on the requirements for practice. I recommend that you read these documents annually as a refresher. You can use these resources as tools of your trade to ensure that you are “legal,” meaning properly licensed to practice, as well as to determine what conduct is appropriate in your practice.

Other downfalls in licensure are failing to meet the initial requirements, failing to renew, and failing to track and accumulate sufficient continuing education credits. Please refer to Chapter 326 and Rule 1800 for the requirements for licensure. Mark your renewal deadlines, and renew on time, so that your license does not expire. Be aware that the professional societies now offer many methods for obtaining continuing education credits – it’s not just sitting in a conference room anymore. You may teach a course, write an article, listen to a taped lecture, or attend a seminar. These many outlets and opportunities for continuing education eliminate the excuses for noncompliance. These elemental steps are critical to your legal status as a licensed professional. Please do not overlook them or delegate responsibility for them to someone else.

### *Lesson Two: Take charge of your own practice*

The next best way that you can limit professional liability is to take active responsibility for your methods of practice. Develop best practices and implement them in your

firms. Take steps to ensure you avoid unlicensed practice. Know the limits of your professional conduct. Be careful what you sign. Do not sign or stamp someone else's work (See Rule 1805.0200, subpart 4E). If you are in responsible charge or have direct supervision of another's work, be sure that you have, indeed, overseen their work and can knowingly say that it complies with governing codes and project requirements before you affix your signature or seal (See Rule 1805.1600).

We have seen a growing number of claims related to how design professionals, and especially architects, bill their time on invoices to clients. Clients seek to avoid payment by alleging that the design firm held out non-licensed individuals as architects and billed out their time as such. Be aware that, if proven, this type of claim can lead to the court ordering the design firm to return all of the fees it earned on a project (an unpleasant term called "disgorgement"). Implement internal procedures such that your practice and your billing records are clean and clearly state the roles of your staff and the work they perform on any given project.

*Lesson Three: Ethical practice is a key means for protecting the health, safety and welfare of the citizens of the State of Minnesota, and impacts your professional liability  
Pursuant to Minnesota Rules Chapter 1805, the Rules of Professional Conduct are part and parcel of your licensure in the State of Minnesota.*

These rules exist to implement the laws and rules governing the various practices overseen by the Board, and apply to each person, partnership, or corporation subject to the Board's jurisdiction. The ethical rules seek to preserve professional integrity and, thereby, protect the public from unqualified professionals and/or improper conduct by these professionals. In short, a commitment to an ethical practice will serve the overall mission of protecting the health, safety and welfare of the citizens we serve, and also eliminate many of the issues that can lead to professional liability claims.

*Lesson Four: Licensure is a privilege*

So much of success in life is based on attitude. Be it law or land surveying, none of us is "entitled" to the license that we hold to practice. The license is a privilege that we earn only after meeting the qualifications of education, examination and experience as set forth in the Minnesota Statutes and Rules, and then continue to meet the standards necessary to maintain that license. Keeping that attitude is critical to staying on top of the many requirements necessary for maintaining licensure, as well as establishing and maintaining a sound and ethical practice, and following best practices. I wish each of you the best in your respective practice and profession.