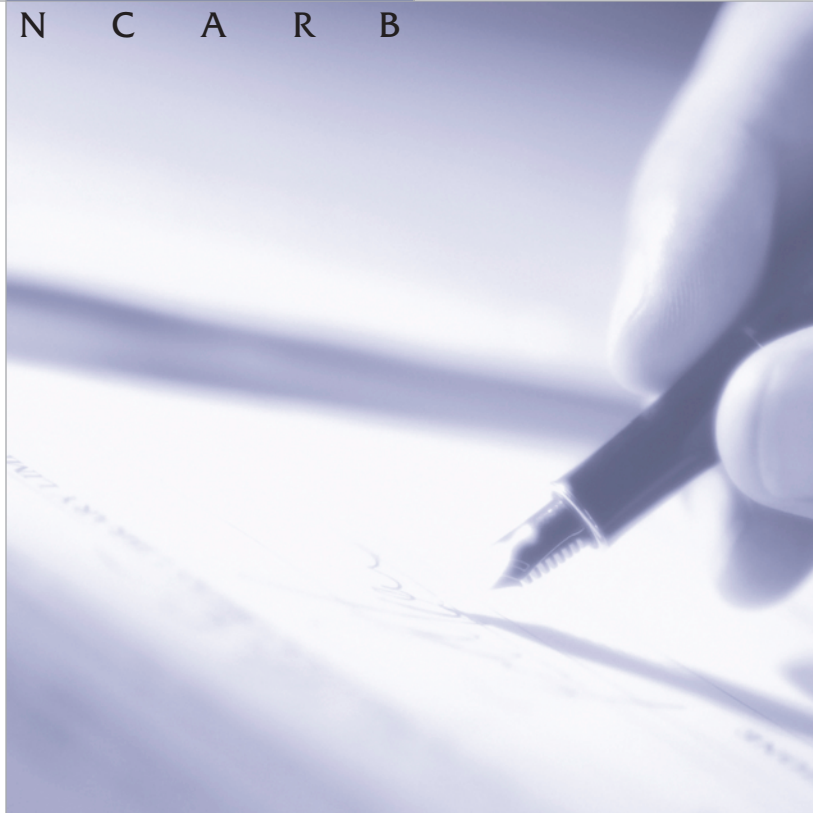


N C A R B

March 2005



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MISSION STATEMENT

The National Council of Architectural Registration Boards (NCARB) is a nonprofit corporation comprising the legally constituted architectural registration boards of the 50 states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands as its members.

The mission of NCARB is to work together as a council of member boards to safeguard the health, safety, and welfare of the public and to assist member boards in carrying out their duties. Pursuant thereto, the Council shall develop and recommend standards to be required of an applicant for architectural registration; develop and recommend standards regulating the practice of architecture; provide to member boards a process for certifying the qualifications of an architect for registration; and represent the interests of member boards before public and private agencies, provided that the Council shall not purport to represent the interest of a specific member board without that member board's approval.

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INTRODUCTION

It has long been a premise of good architectural practice and responsible regulation that an architect should not sign or seal drawings, specifications, or other professional work (“technical submissions”) that he/she did not prepare or cause to be prepared under his/her responsible control. The National Council of Architectural Registration Boards (NCARB) believes it is important to review how this practice of plan-stamping affects the public’s health, safety, and welfare, which our member boards are bound to protect.

NCARB’S POSITION ON PLAN-STAMPING

NCARB’s recommended Rules of Conduct and Model Law specifically prohibit the practice of plan-stamping.

Rule 5.2 of the Rules of Conduct states:

5.2 An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect’s responsible control; (iii) prepared by another architect registered in the same jurisdiction if the signing and sealing architect has reviewed the other architect’s work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by the National Council of Architectural Registration Board if (a) the signing and sealing architect has reviewed the other architect’s work and has integrated the work into his/her own technical submissions and (b) the other architect’s technical submissions are prototypical building documents. An architect may also sign and seal drawings, specifications, or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions. “Responsible control” shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect’s responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect’s control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect’s own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect’s review of and integration of the work of such other architect’s work into his/her own technical submissions, and that such review and integration met the required professional standard of care.¹

¹ Rules of Conduct (NCARB, 2004) p. 7.

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Likewise, Section 6 of the Model Law states:

Every registered architect shall have a seal of a design authorized by the Board by regulation. All technical submissions prepared by such architect, or under his/her responsible control, shall be stamped with the impression of his/her seal, which shall mean that the architect was in responsible control over the content of such technical submissions during their preparation and has applied the required professional standard of care. An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; (iii) prepared by another architect registered in the same jurisdiction if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by the National Council of Architectural Registration Board if (a) the signing and sealing architect has reviewed the other architect's work and has integrated the work into his/her own technical submissions and (b) the other architect's technical submissions are prototypical building documents. An architect may also sign and seal drawings, specifications or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions. No public official charged with the enforcement duties set forth in [statutory references for building inspectors] shall accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped as required by this Section or the applicant has certified thereon to the applicability of a specific exception under Section 11 permitting the preparation of such technical submissions by a person not registered hereunder. A building permit issued with respect to technical submissions which do not conform with the requirements of this Section shall be invalid. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect's own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care.²

²Legislative Guidelines and Model Law, Model Regulations (NCARB, 2004) p. 15.

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NCARB believes that the practice of plan-stamping poses substantial risks to the public's health, safety, and welfare and should be vigorously opposed by state registration boards. The requirement that an architect either prepare or supervise the work throughout its preparation is an important guarantee of the integrity and competence of the work.

There are at least two important reasons for this. The first derives from the design process itself. An architect furnishes professional services to solve a client's needs; the architect does not sell a product. There is never a single right answer to a client's design requirements. Aesthetic, economic, and technological considerations impact the design of each element in a building, and the design of each element influences the design of all other elements. An architect takes all of these considerations into account and weighs them against the safety of the final product. The way materials respond to each other, the tolerance of a particular design in predictable climatic and other conditions, requirements of applicable codes and laws, and the ways in which users of the building will react to the space are all considerations that the public expects architects to include in the choices the architect makes in composing a total design. Architects, like the rest of humankind, deal with an imperfect world that constrains those choices and compels compromise, but the architect who performs in accordance with professional standards makes certain that the final result meets applicable standards of health, safety, and welfare.

Theoretically, an architect could take documents prepared by an unlicensed person, minutely dissect them, review all of the calculations involved, and put the intricate parts back together with such care that the public could rely on the final product to the same extent as it could if the architect had prepared everything himself/herself from the beginning. In reality, that care is almost never taken. It is improbable that a client would pay for a process that is no doubt more expensive than engaging an architect to perform the conventional design services. It is also improbable that an architect with the choice of either devoting his/her talent, time, and energy to a design of his/her own creation, or dissecting, recalculating, and reassembling the work of another, would choose the latter course. In the real world, the plan stamper may sometimes review the work and may even reach a general conclusion that the design works. But he/she does not attempt to recreate the process, understand the intricate parts and the constraints, and review and weigh all the choices.

The second reason NCARB believes plan-stamping does not further the public's health, safety and welfare has already been alluded to: what kind of architect prefers plan-stamping the work of another to creating his/her own design? No one who has observed the practice of architecture in the United States would challenge the conclusion that plan-stampers are marginal practitioners. Architects who are unable to obtain their own commissions are the architects who are willing to sell their seals to stamp the work of others. NCARB's Professional Conduct Committee has had many plan-stamping disciplinary cases before it over the years; its experience confirms that plan-stampers are most often in marginal practices, are paid such nominal sums for their services as to preclude any detailed inquiry into the work they are asked to seal, and, in fact, typically give the work only perfunctory review. Thus, as a

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pragmatic judgment, NCARB has concluded that plan-stamping does not afford the public the protection it needs.

A regulation to protect the public should always be based on a reasonable evaluation of the probable consequences in the absence of such regulation. It does not weaken the propositions set out above to observe that there may have been a case in which a plan-stamping architect may have found and corrected deficiencies. Regulation deals with probabilities, not with unique exceptions.

The foregoing discussion assumes that the original work was prepared by an unlicensed person and submitted to the plan-stamper in order to file the plans with the building official or another public agency requiring an architect's seal. When the original work was prepared by an architect registered in the same or another jurisdiction, the policies set forth above are satisfied and subject to certain limitations more fully described in the Model Law—first architect must be identified as the author and hold an NCARB Certificate thereby entitling him/her to become registered in any jurisdiction, and the plans must be prototypical building documents; the second architect must have reviewed the first architect's work and integrated that work into his/her own work—the documents may be signed and sealed by a second architect.

LEGAL BASIS FOR PROHIBITING PLAN-STAMPING

An architect who seals or signs drawings that were prepared by an unlicensed person that he/she does not oversee violates the law. Plan-stamping warrants disciplinary action because plan-stamping facilitates the practice of architecture by unlicensed individuals and because architectural registration statutes, like those regulating the practice of medicine, law, and other professions, rest on a commonly held belief expressed in laws that the public's health, safety, and welfare is protected only if licensed architects design substantial buildings. Although there are relatively few cases, most courts have upheld disciplinary actions taken by registration boards. The cases do emphasize the need for attention to carefully drafting the details of the statute and accompanying regulations that implement the policies against plan-stamping.

*Wamp v. Tennessee State Board of Architectural & Engineering Examiners*³ exemplifies the customary approach to plan-stamping. The Tennessee Supreme Court upheld suspending Wamp's license, placing him on probation and fining him for affixing "his seal as an architect to plans which had not been prepared by him or under his responsibility." Wamp sought to defend by marshalling evidence proving he revised the plans to meet the requirements of the city building code for issuance of a building permit. Wamp also revised the plans after construction began to accommodate the characteristics of the building site. But the Court said, "Allowing an architect to place the architect's seal on work prepared by others upon such review and revisions as the architect should consider appropriate would weaken substantially the standard imposed by the statute."

*Catlin v. Board of Registration Architects*⁴ involved an appeal from the Massachusetts Board's decision to place Catlin on a two-year probation for plan-stamping. Catlin, like Wamp, marshaled evidence showing he had removed defects from the plans. Unlike Wamp, Catlin failed to draft any part

³868 S.W.2d 273 (Tenn. 1993); see also 1994 WL 481417 (Tenn.Ct.App.).

⁴604 N.E.2d 1301 (Mass. 1992).

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of the construction documents. The Massachusetts Supreme Court located “the heart of the dispute” in the proper interpretation of the word “prepared” in the statute that it described to be the following: “Section 60F, which parallels Section 60G, provides that ‘[a] registered architect shall impress his seal on any plans or specifications only if . . . he was the *author* of such plans and specifications or *in responsible charge* of their preparation” (alteration in original) . . . Catlin was not the author of the plans, nor did he produce the plans in this case; he reviewed not the work of his regularly employed subordinates in his normal place of business, but rather plans drawn by an independent architectural firm based outside Massachusetts.”

*Slatton v. Tennessee State Board of Architectural & Engineering Examiners*⁵ deals with an approach sometimes taken by plan-stampers, namely that the legal responsibility assumed by signing the plans is the same as being “responsible” for the plans’ preparation. Slatton was a registered engineer in Tennessee. He signed and sealed plans for an office building and shopping center project in Chattanooga that had been prepared by an unlicensed individual. Tennessee law prohibited an architect or engineer from signing and sealing “any document which has not been prepared by him or under his responsibility.” First, Slatton attacked the administrative procedures followed by the Tennessee Board. The court found no defect in the Board procedures. Next, Slatton claimed that he had complied with the statute since the plans were “under his responsibility” in that, once he sealed them, he took responsibility for them. The court rejected Slatton’s attempt to turn the statute on its head, concluding that the language plainly referred to documents that the architect or engineer prepared or that were prepared by persons working under his direction. It said, “The statute . . . leaves no room for doubt that ‘plan-stamping’ of plans not prepared by, or under the ‘responsibility’ of, the stamper is professional misconduct . . . [Slatton’s] acts and conduct were not only unlawful and unethical, but also, and more important, they created an unreasonable risk to the lives and property of the public.”

*Duncan v. Missouri Board for Architects, Professional Engineering and Land Surveyors*⁶ furnishes a detailed analysis of the effect of signing and sealing construction plans. Duncan was an appeal from the disciplinary action taken by the Missouri Board against the structural engineers responsible for the collapse of atrium walkways at the Kansas City Hyatt Regency Hotel. This was the worst building disaster in U.S. history, killing 114 people and injuring at least 186. Missouri’s statute prohibited an engineer from sealing documents “which have not been prepared by him or under his immediate personal supervision.” The court observed that the Missouri law relating to signing and sealing documents is to establish professional accountability for the protection of the public. Emphasizing that it is a misdemeanor for a registered engineer “to affix his seal to plans which have not been prepared ‘by him or under his immediate personal supervision,’” the court concluded “an engineer affixing his seal to plans is personally and professionally responsible therefore.”

⁵1988 WL 69508 (Tenn. Ct. App.).

⁶744 S.W.2d 524 (Mo. 1998).

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*Piland v. Texas Board of Architectural Examiners*⁷ upheld the Texas Board's revocation of Piland's license when he signed and sealed plans prepared by another individual. Texas Board regulations prohibited an architect from signing and sealing documents "developed by others not under the direct and continuing supervision and not subject to the authority of that [architect] in critical, professional judgments." Piland sought to defend his actions on the grounds that the documents were, in fact, prepared by an individual named Ashcroft, who, in fact, was a registered architect in Texas. The court emphasized that the regulation allowed an architect to seal the work of another person only when that person was under the architect's direct and continuing supervision and subject to the architect's authority in critical, professional judgment. Ashcroft did not prepare the documents under Piland's supervision and was not subject to Piland's critical professional judgments. Accordingly, the revocation was upheld.

Two cases have arisen in Florida that leave the jurisdiction's view of plan-stamping in an ambiguous state. The first case, *Markel v. Florida Board of Architecture*,⁸ was decided in 1972 by the state's highest court. Markel was charged with signing and sealing drawings that had been prepared by unlicensed individuals who were not operating under his "responsible supervising control" in violation of Florida statutes. Markel claimed that while the draftsmen were not his employees, he checked out many of the details, and where there were mistakes he caused them to be corrected. The evidence showed, however, that he played only a small role in the overall preparation of the documents. He did not begin to exercise any supervisory control until the plans were nearing completion. While the court expressed doubt as to whether or not this met the statutory test, it gave deference to the decision of the state board that it did not, and remarked that "after-the-fact ratification of a non-professional's prior unsupervised work product is generally alien to professional standards."

Seven years later, however, an intermediate Florida court reversed the board's disciplinary action against a Florida architect in *Medlin v. Florida Board of Architecture*.⁹ Medlin claimed that his review and correction of plans prepared by others constituted his own preparation for purposes of the statute. Since the Florida Supreme Court had construed only "responsible supervising control" in *Markel*, the intermediate court believed itself free to construe the word "prepared" unconstrained by the *Markel* decision. According to Black's Law Dictionary, as cited by the court, "prepare" means "to provide with necessary means, to make ready, to provide with what is appropriate or necessary." If one were preparing an army to meet its enemy, the meaning cited would be appropriate. But the second meaning in the American Heritage Dictionary, "to put together or make by combining various elements or ingredients," and the fourth meaning in Webster's, "to put together, make, produce," is clearly

⁷562 S.W.2d 26 (Tex. Civ. App.-Austin, Feb. 01, 1978) (No.12651).

⁸268 So.2d 374 (Fla. 1972).

⁹382 So.2d 708 (Fla. App. 1 Dist. 1979).

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what the statutory draftsmen intended. But in the bizarre world of the District Court of Appeals of Florida, First District, the intent of the statute was irrelevant. If “prepared” is understood as “to provide with what is appropriate,” then Medlin’s review, which included a handful of changes, was enough to avoid discipline for plan-stamping.¹⁰

*State of South Carolina v. Howell*¹¹ illustrates the companion violation that occurs when an unlicensed individual prepares the plans furnished to the plan-stamping architect. In lengthy administrative and judicial proceedings, Howell was found in contempt of an order prohibiting unlicensed practice by him or through licensed architects who had been employed as the court found “for the exclusive purpose of signing architectural plans completed and supervised by Howell so as to give them an appearance of legitimacy.” The trial court specifically was authorized to imprison him, fine him and close up his entire business, and, in fact, did order him imprisoned until he permanently dissolved his corporation, terminated all of the architects in his employ, and agreed to never accept employment in the future in any architectural firm in any capacity, including employee, draftsman, or consultant.¹²

¹⁰See also *State Board of Architects v. Clark*, 111 Md. App. 247 (1997); *Indiana State Board of Registration*, 600 N.E.2d 124 (1992).

¹¹328 S.E.2d 77 (S. C. 1985).

¹²South Carolina Court of Common Pleas, Civil Action No. 96-CP-26-33 Order dated April, 1985.