

193C—8.5(542B) Engineering and land surveying services offered by business entities.

8.5(1) Purpose of rule. The purpose of this rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or land surveying services and to guard against the unlicensed practice of professional engineering or land surveying by persons who are not properly licensed to perform such services in the state of Iowa. This rule shall not be construed as restricting truthful advertising by business entities that appropriately place professional engineers or land surveyors in responsible charge of the professional services offered to and performed for the public.

8.5(2) Definitions. For purposes of this rule, the following definitions shall apply:

“Business entity” shall include corporations, partnerships, limited liability companies, persons using fictitious or assumed names, or any other form of entity which may conduct business.

“In responsible charge” means having direct control of and personal supervision over any land surveying work or work involving the practice of professional engineering. One or more persons, jointly or severally, may be in responsible charge. Indicia of being “in responsible charge” include:

1. Obtaining or setting the project or service parameters or criteria.
2. Dictating the manner and methods by which professional services are performed.
3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee’s supervision.
4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.
5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee’s direct supervision.
6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee’s professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.
7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

“Professional services” shall include professional engineering and land surveying services, as defined in Iowa Code sections 542B.2(5) and (8) and 542B.27, as applicable to the fact situation at issue.

8.5(3) General rule. Business entities offering professional services to the public must be owned, managed, or appropriately staffed by one or more professional engineers or land surveyors, as applicable, who are in responsible charge of all professional services offered and performed.

8.5(4) Appropriate staffing. The nature and extent of appropriate staffing by licensed professionals is necessarily a fact-based determination dependent on such factors as the nature and volume of professional services offered and performed, the risk of unlicensed practice, the impact of the professional services on the life, health and safety of the public and the public’s property, and the representations made to the public. While the legal nature of the business entity’s relationship (e.g., owner, manager, employee) with a licensed professional engineer or land surveyor is not necessarily determinative, licensed professionals must be in responsible charge of all professional services offered and performed.

8.5(5) Professional engineering or land surveying firms. Business entities holding themselves out to the public as professional engineering or land surveying firms cannot satisfy the requirements of this rule solely by retaining, through employment or contract, a licensed professional on an as-needed, occasional or consulting basis. Such an arrangement fosters unlicensed practice by the unlicensed owners or managers who place themselves in charge of determining when a licensed professional is needed. When a business entity conveys to the public that it is organized as a firm of licensed professionals, the public has a right to expect that the firm retains the full-time services of one or more licensed professionals. “Full-time” in this context is not measured by hours, but by a licensee’s sustained, meaningful, and effective, direct supervision of all professional services performed, whether the firm performs services, for example, 20 hours per month or 80 hours per week.

8.5(6) *Restricted services.* Business entities that do not generally hold themselves out to the public as professional engineering or land surveying firms, but that do offer some type of professional engineering or land surveying service, shall be appropriately staffed by licensed professionals in a manner that (a) corresponds with the representations made to the public, (b) places licensed professionals in responsible charge of all professional services performed, and (c) guards against the unlicensed practice of professional engineering or land surveying.

8.5(7) *Permitted practices.*

a. Nothing in this rule is intended to prevent an individual or business entity from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

b. Nothing in this rule shall prevent a joint venture arrangement between an engineering or land surveying firm and a business entity that is not owned, managed, or staffed by professional engineers or land surveyors, in which the venturing entities jointly and truthfully offer professional engineering or land surveying services on a project-by-project basis. Licensed professional engineers and land surveyors who participate in such arrangements shall ensure that the public is accurately informed as to the nature of all professional services to be performed and by whom the services will be performed.

8.5(8) *Remedies against licensees.* Licensed professional engineers or land surveyors who aid and abet the unlicensed offering or practice of professional engineering or land surveying, or who otherwise knowingly participate in a business entity that does not comply with this rule, are engaging in unethical practices that are harmful or detrimental to the public and are subject to disciplinary action by the board.

8.5(9) *Remedies against business entities and unlicensed individuals.* Pursuant to Iowa Code section 542B.27, the board may by order impose civil penalties against any business entity or unlicensed individual that offers or performs professional services in violation of Iowa Code chapter 542B. The board shall apply the guidelines set forth in this rule in determining whether a violation exists and in establishing an appropriate civil penalty. Civil penalties may not exceed \$1000 for each offense. Each day of a continued violation constitutes a separate offense. In addition to a civil penalty or as an alternative to such remedy, the board may seek an injunction in district court to prevent future violations by business entities or by licensed or unlicensed individuals.