



State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors

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TO SUB-CONTRACT OR NOT TO SUB-CONTRACT

Dale Dawson, Lead Administrative Officer

Recently we have received a large number of complaints that licensed contractors are using unlicensed persons to perform work which requires a license. These unlicensed persons are not on the contractors payroll with taxes being withheld. This practice is illegal subcontracting. It appears to be more common in plumbing and heating installations in tract housing and apartment construction, but does happen in other areas in our industry. During my 11 plus years with the Board I have investigated many complaints where jobs had been sub-contracted to unlicensed installers concerned only with completing the job as soon as possible so as to make more money. This leads directly to sloppy, poorly designed and sub-standard installations and The General Statutes of North Carolina state that the only person exempted from the license is a "bona fide employee of a licensee of the Board." (G.S. 87-25, last sentence.) Several years ago the Board adopted the following definition of a "bona fide employee":

.0512 EMPLOYEES EXEMPTED FROM LICENSURE

- (a) As used in G.S. 87-25, the phrase "bona fide employee" shall mean and refer to an individual who is directly and regularly employed in the ordinary course of business by a contractor licensed pursuant to G.S. 87, Article 2. Factors establishing whether the individual is directly and regularly employed in the ordinary course of business of such contractor include, without limitation, the following list:
- (1) whether the individual is on the licensed contractor's payroll;
 - (2) whether the licensed contractor

withholds taxes from the payment to the individual and performs such other acts as are lawfully required of an employer;

- (3) whether the licensed contractor exercises control over the method and manner of the individual's work; and
 - (4) whether the licensed contractor, and not the individual, is and remains obligated to the owner for the work.
- (b) Persons acting as independent contractors, consultants or subcontractors, or paid as such, are not bona fide employees.

According to the above rules, anyone performing plumbing, heating, fire sprinkler or fuel piping installations is required either to be on a licensed contractor's payroll, with withholding and a W-2, or to hold an active license themselves. If you are a licensed contractor and you sub-contract work requiring a license to unlicensed persons, you are opening yourself to a complaint from the Board for license peddling. Allowing these unlicensed persons to use your license can lead to suspension or possible revocation of your license. All it takes is one dissatisfied homeowner or one disgruntled or big-talking worker on your job. Avoiding withholding is too much risk.

As to the unlicensed people, we have in the past and will continue to obtain injunctions and contempt of court citations against unlicensed persons taking subcontracts from licensed contractors for working without a license. This rule is very clear and enforcement is consistent.

2004



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TAKE NOTE:

- ♦ You must have 6 CE hours of Board approved classes to renew your license for 2005.
- ♦ Check your CE hours online by clicking "Continuing Education" at www.nclicensing.org

Correction to Court Re-establishes 13 SEER Requirement article: The article stated all new Residential air conditioners and heat pumps, *installed* on or after January 1, 2006 . . . The sentence should state equipment *manufactured* on or after January 23, 2006 must have a minimum SEER of 13. Equipment manufactured prior to January 23, 2006 may, however, be installed by licensees.

AVOID UNNECESSARY COMPLAINTS

Michele Faison, Complaint Coordinator

Most of you have probably reviewed the Summary of Formal Proceedings or glanced over the list of Permit Warnings printed in the quarterly newsletters, but these make up just a few of the complaints received by our office. On average we process more than 600 complaints a year and have seen a continual rise as the number of licensees are increasing. However, many of the complaints received by the Board could be avoided by addressing the more common issues listed below. Please take the time to read them over and see if you are doing everything you can to protect your license and/or business from an unnecessary complaint.

Complaint:

- The work performed has code violations.

Solution:

- Make sure that permits are purchased prior to the commencement of any work performed under your license and assure that a request for final inspection is made within 10 days substantial completion of the work, in accordance with NCAC 21.0402. Practice good business by keeping well organized records for every customer including any permits purchased and their inspection reports.

Complaint:

- The work was not done as discussed and the price was much higher than agreed.

Solution:

- It is important to have written contracts for each installation. Written contracts should contain a description of the work to be performed, total cost for the job, and the signatures of both the contractor and the customer. In the event there is a change in the original contract, prepare a change order form describing any additional work or cost associated with the job and the signatures of both the contractor and customer.

Complaint:

- Customer needs service and has called numerous times with no reply or has received a discourteous response from the contractor or his/her coworkers.

Solution:

- Always respond to calls from customers in a timely fashion. Provide the same quality of customer service that you would expect for yourself. Remember that word of mouth can be a great way to promote your business, but a bad customer experience can result in an unwelcome public advertisement.

Finally, take pride in all work you perform. The same care should be put into every job as customers depend on your knowledge of the industry and trade to provide a competent service.

Attention

Fire Sprinkler Contractors and Inspectors

Below are answers to frequently asked questions about the fire sprinkler inspection license.

Q. Who needs an inspection license?

A. Any firm performing NFPA-25 inspections.

Q. What is the difference between the license for fire sprinkler inspection technicians and for the fire sprinkler inspection contractor?

A. The fire sprinkler inspection contractor license is intended for the person or company who **engages in the business of contracting** fire sprinkler inspections consistent with NFPA-25. The fire sprinkler inspection technician is not a contractor, but is frequently the person carrying out the tasks or checklist involved in the annual NFPA-25 inspection.

Q. Does a fire sprinkler contractor who does design and installation need an inspection license?

A. Yes, but only if the contractor plans to offer or perform periodic inspections consistent with NFPA-25.

Q. Why?

A. Previously a fire sprinkler contracting license was required to handle inspections as well as design and installation. Some people ignored the law. In 2003 the law changed to allow a separate limited license for the inspection component. Now the license for NFPA-25 inspection and testing is separate from the license for design and installation.

Q. Since the transition period for obtaining inspection contractor or inspection technician license based solely on experience has ended, how can one be licensed to perform these inspections?

A. To obtain a fire sprinkler inspection **contractor** license a NICET III certification in Inspection and Testing of Water-based Systems is required. To obtain a fire sprinkler inspection **technician** license a NICET II certification in Inspection and Testing of Water-based Systems is required.

*Q. If an **inspection contractor** license was obtained during the transition period, is a NICET III certification in Inspection and Testing of Water-based Systems required in order to keep the license?*

A. No.

*Q. If an **inspection technician** license was obtained without any NICET training and examination, will the Technician be required to upgrade to NICET certification in order to keep the license?*

A. Yes, persons who received the inspection technician license without NICET certification were licensed on a provisional basis. NICET II certification must be obtained by December 31, 2005 in order to renew the license for 2006. Those persons should be working on NICET now, as considerable time is required.

Consent Agreement Report

A Consent Agreement is an affidavit taken from unlicensed individuals performing plumbing, heating and fire sprinkler work without a license. These individuals sign a Consent Agreement stating that they will not perform any work requiring a license until they are properly licensed to do so. If you see these businesses or individuals in the field please report them to this office.

CONSENT AGREEMENTS

<u>Name</u>	<u>City/Town</u>	<u>Agreement</u>
Anderson, Timothy	Asheboro, NC	04/12/2004
Barnes, James	Matthews, NC	03/01/2004
Barton, Robert	Winston Salem, NC	07/14/2004
Blanton, Nathan	Fayetteville, NC	04/22/2004
Burch, David	Shelby, NC	03/23/2004
Burke, James	Haw River, NC	07/14/2004
Clowers, Dennis	Matthews, NC	03/01/2004
Cook, Lewis	Huntersville, NC	06/01/2004
Denny, Henry	Carthage, NC	05/24/2004
Eleazer, Donald	Mooresville, NC	01/20/2004
Evans, Dwayne	Kenansville, NC	11/13/2003
Funderburk, Michael Sr.	Clarksville, VA	07/21/2004
Gibson, Shawn	Carthage, NC	07/27/2004
James, Lavelle	Hope Mills, NC	07/12/2004
Johnson, Tony	Shelby, NC	06/10/2004
Major, John Jr.	Monroe, NC	03/17/2004
Martin, Kevin	Reidsville, NC	04/27/2004
Mode, Steve	Forest City, NC	07/20/2004
Moore, Vincent	Charlotte, NC	03/10/2004
Newcomer, Harry	Pilot Mountain, NC	05/14/2004
Odle, Fred	Fort Mill, SC	04/05/2004
Orrell, George	Raleigh, NC	06/11/2004
Parks, Scottie	Huntersville, NC	03/24/2004
Reinhardt, Tommy	Lincolnton, NC	03/29/2004
Rick, Billy	Charlotte, NC	05/12/2004
Shearin, Vincent	Henderson, NC	06/01/2004
Smith, Theodore	Fayetteville, NC	03/02/2004
Soles, David	Fayetteville, NC	07/26/2004
Spencer, Roger	Charlotte, NC	03/10/2004
Strickland, Joel	Stedman, NC	04/08/2004
Sugg, James	Memphis, TN	04/01/2004
Tanner, Timothy	Monroe, NC	05/25/2004

Taylor, Donald	Burnsville, NC	05/07/2004
White, Robert Jr.	Bessemer City, NC	01/06/2004
Wilkins, Steven	Wilmington, NC	03/23/2004

PERMIT WARNINGS

<u>Name</u>	<u>City/Town</u>	<u>Warning</u>
Bivens, Clayton	Oakboro, NC	04/28/2004
Bowen, John	Charlotte, NC	05/12/2004
Brown, Tommy	Youngsville, NC	04/23/2004
Callahan, Kevin	Midland, NC	07/22/2004
Crisco, Jerry	Albemarle, NC	02/20/2004
Davis, Barry	Independence, VA	07/27/2004
Deese, Earl	Laurinburg, NC	07/02/2004
Efird, George	Asheville, NC	07/26/2004
Ferguson, James	Mooresville, NC	01/20/2004
Griffin, John	Lenoir, NC	03/25/2004
Harrison, William	Flat Rock, NC	07/22/2004
Huneycutt, William	Matthews, NC	01/12/2004
Ivey, Johnny	Peachland, NC	03/01/2004
Jackson, Lynwood Jr.	Broadway, NC	07/22/2004
Love, Darrell	Monroe, NC	05/25/2004
Love, Gary	Monroe, NC	05/25/2004
Mattox, Randal	Eden, NC	04/27/2004
Scharf, Brian	Concord, NC	04/29/2004
Smith, Stephen	Brevard, NC	07/01/2004
Strader, Dwain	Reidsville, NC	07/14/2004
Tatum, William	Smithfield, NC	05/12/2004
Tuttle, John	Pfafftown, NC	07/15/2004
Walton, Homer	Hendersonville, NC	07/23/2004
Waycaster, James	Gastonia, NC	03/24/2004
Waycaster, Shannon	Gastonia, NC	03/24/2004
Wells, Richard	Greensboro, NC	06/15/2004
Wilkinson, Kevin	Sanford, NC	06/17/2004

NEWS FLASH

Renewal Time Is Near

- ☞ Renewals to be mailed to licensees **October 2004**
- ☞ Fill out renewal form completely.
- ☞ Renewals must be returned to Board office by Dec. 31, 2004.
- ☞ Continuing Education requirements **must** be met to renew license for 2005.
- ☞ Fire Sprinkler Inspection Technicians do not need continuing education hours to renew license.
- ☞ Master license holders need to verify that their sub-licensees have completed CE requirements in order to renew license.
- ☞ Fire Sprinkler Contractors are to send a copy of NICET certificate with renewal form.
- ☞ Inspectors are to send a copy of their current inspector card(s) with renewal form.
- ☞ Licensees who obtained their license in 2004 do not need continuing education for 2005. Continuing education requirements will be necessary for 2006 renewal and each year thereafter.



Yellow Pages A MUST

In accordance with 21 NCAC 50.0406 paragraph (c) *The license number and qualification of the firm will be displayed on firm contracts, proposals, permit applications, and telephone yellow page advertising.*

It is imperative that firms list their license number in all telephone yellow page type advertising books.

ATTENTION

**ALL LICENSEES MUST COMPLETE
SIX HOURS OF CONTINUING EDUCATION
IN ORDER TO RENEW LICENSE**

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Raleigh, NC 27609**



CHANGE OF ADDRESS

The Board's rule, 21 NCAC 50.0408 (c) reads as follows:

(C) The licensee shall notify the Board of any change in location or mailing address from that shown on the last license renewal invoice within 30 days after the change takes place.

The above rule requires you to notify the Board of a change of address within 30 days after the change takes place. Compliance with this rule benefits you and the Board. The Board is able to keep its records up to date if you notify the office of an address change. The Board is also able to keep you up to date if it has your correct address. Through the newsletter, the Board notifies you of new requirements for licensed contractors, code amendments, educational opportunities, public rule hearings that may affect you, and much more. The newsletter will not get to you if the Board does not have your correct address. The Board notifies you when your license is going to expire and sends you an invoice. This invoice will not get to you if the Board does not have your correct address.

Changes must be in writing with your signature.

Phone: 919/875-3612
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Fax: 919/875-3616
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PRESORT
STANDARD

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