

# *THE SCOPE*



*BUFFALO/WESTERN NEW YORK CHAPTER of the CONSTRUCTION SPECIFICATIONS INSTITUTE*

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*New Year*  
*New Beginnings*  
*Enduring Foundation*

**February 2021**

**Virtual** Membership Meeting February 11, 2021

**Effective Equipment Specs:  
Specifying and Competitively Bidding Equipment**  
Presented by Buffalo Chapter Certification Chair  
Kevin O'Beirne, PE, FCSI, CCS, CCA  
Engineering Specifications Manager of HDR Inc.

1-AIA LU/HSW

**Invitation to follow by e-mail**

**There will be a restaurant gift card drawing for attendees**

**Program Description to be found on page 4**

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Please let *THE SCOPE* be your clarion!

Your activities, projects and achievements are important to our membership

Please forward your articles to the Editor



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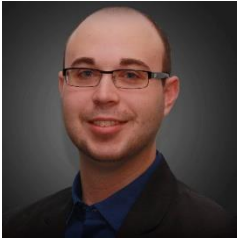
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## **Renew and Reinvent**

**Last year, our world had been dealt a hand that required massive reconfiguration and reinvention of all processes, lives, personalities, attitudes, etc. Unfortunately, this affected group events such as our CSI Buffalo/ WNY Chapter too. So, like others, we had to reinvent. 2020 was a learning year. 2021 will be the Renew and Reinvent year. As I step into a new Presidential role, with my Vice President, Suzanne Daddis, Secretary, Robert Rumpl, and Treasurer, William Ferguson, and countless committee leaders, we will be bringing a reinvented CSI Buffalo & WNY group. We will begin working on virtual sessions instead of our traditional Lunch & Learns. We will be renewing programming that can be completed safely and still be educational and beneficial to all of our members across the construction industry. I look forward to this new role and new endeavors. CSI Buffalo / WNY, and I, will be growing, renewing, and reinventing throughout 2021.**

**Happy New Year, and Thoughts to all our members who have been impacted one way or another by the year 2020. Best Wishes to a better and prosperous 2021!**

**Devin Filipiak, CIT, CSI  
President, Buffalo/WNY Chapter**

## **Highlights of the Chapter Board Meeting, 1/13/21**

- Board positions delineated as described on Page 2 of *THE SCOPE*.
- Treasurer's Report shows we are solvent and are communicating with the IRS for Non-Profit status.
- Chapter events did not include Architect's Ski Day this year but discussion for next year slated for future discussion.
- June event to be discussed for future inclusion if possible.
- Devin is currently exploring Star Chapter for Buffalo Chapter Website.
- *THE SCOPE* is once again to be the official newsletter of the Buffalo Chapter headed by Jim Grucella.
- Discussion as to the viability of PO Box for an official terminus for contacting our chapter

**Title of Presentation:** Effective Equipment Specs: Specifying and Competitively Bidding Equipment

**Presenter:** Kevin O'Beirne, PE, FCSI, CCS, CCCA

**Title:** National Manager of Engineering Specifications, HDR

As the owner's agent in the process of design, procurement, and construction, the engineer must balance the owner's desires, applicable laws and regulations, information from prospective sellers, and the engineer's own professional obligations under applicable licensing laws in the preparation of the project's specifications and bidding and contracting requirements. Often, some of these obligations and inputs will conflict with each other, particular relative to the procurement of large process equipment.

This presentation includes overviews of how the engineer can most-effectively obtain the owner's instructions, while balancing other competing interests, to create an effective set of procurement documents. The presentation also addresses effective procurement procedures specific to equipment selection and purchasing on public works projects, and will include an overview of the benefits, drawbacks, and procedures of equipment contracts for the owner's procurement of engineered equipment directly from a manufacturer or seller, and other key issues to ensure compliance with public bidding laws and fair practices, and reduce the potential for bid protests, claims, and disputes.

After attending this session, participants should be able to:

- Describe criteria important for selecting the form of purchase contracting documents.
- Understand procedures for selecting and specifying the associated equipment and documenting the reasons therefor, and how to manage Owner expectations.
- Describe procurement approaches for equipment purchase contracts and constraints on identifying the apparent low bidder on procurements for public owners.
- Be able to explain budgetary and scope considerations to consultants relative to equipment purchase contracts.



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## The Editor's Scream

I remember returning from the Caribbean at the end of February, and attending our excellent March meeting at our usual hangout, the Millennium, where we hosted Mr. Cook's Students from the North Tonawanda High School's Architectural & Engineering Academy. It was so rewarding to see young inquisitive people with desire and purpose in attendance arranged by our Academic Liaison Suzanne Daddis .

And then there was Covid-19! Suddenly, while there was some trepidation in February, we had LOCKDOWN and things have not been the same since. While ostensibly indications this Summer looked like life was reopening, a new burden of restrictions appeared. With physical meetings being impossible, the Buffalo Chapter awaited a door that never opened, but now perhaps there is some light at the end of the tunnel. With an exciting change in Chapter leadership our mission was finally cemented and resurrected with the help of our PC's to virtual Board Meetings. A new resolve emerged to reawaken the Buffalo/WNY Chapter of the Construction Specifications Institute. This Newsletter, which had fallen into disrepair is being brought back to life as the pulse of our organization. I hope that it will be used by members to share knowledge, information and accomplishments in the building industry. We are, after all, Builders! In the past we have featured articles from Kevin O'Beirne, Suzanne Daddis, Deb Siener and Bob Rumpl, illustrating various aspects of the Construction Industry. I would like to highlight a new or established member every month in *THE SCOPE* with a short introduction as a means of fostering solidarity.

My title page highlights 'Enduring Foundation'. The Buffalo was chartered in 1958 as one of the first chapters in the Northeast Region. *THE SCOPE* was originally edited by Art Chatterton who held the honor for many years until his retirement. Al Oberst assumed the newsletter and continued to announce important member information for over 15 years. Often Al was often the glue that held our chapter together! The most prestigious Chapter award is called the **Alvin J. Oberst Excellence in Service Award** for a reason. While he received many awards from our Chapter, he also was awarded the Northeast Region's highest award: The Distinguished Service Award! Al was one of our original members and contributed highly for 45 years! Al had to leave CSI and his beloved SCOPE because of his health in September of 2014. Bill Diehl took over the duties until I took over in January of 2015. After an unfortunate accident where I spent seven months in the hospital, *THE SCOPE* went on hiatus from May 2016 to the present when I will try to resurrect this noble publication. With all of your cooperation we will succeed. Wish me luck! -- Jim Grucella



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## In Memorium

### Vince Bernard

Vince Bernard was an integral member of the Buffalo/WNY Chapter for over 30 years. One of the principals of Kideney Architects, his philosophy was always 'If you are a member of an organization, contribute'. And while Vince was a serious contributor, he was also a gifted motivator encouraging others to volunteer. He served as Chapter President twice, Vice president, the Chairman of Spec-Tech product show. The Annual CSI Golf Outing was his forte, drawing over 100 golfers from the construction industry for over ten years. Vince was greatly involved in Buffalo's 1993 Region Conference which coincided with the World Games held in our city. With his exposure in this venue, the Region never let him go. He was Technical Director of the Region for a decade. He was the impetus for the 2004 Region Conference that Chapter President Jim Grucella successfully hosted, which should have occurred in 2002, but was postponed because of 9/11. Vince and Carol Bernard were wonderful promoters, and with great diplomacy grew the stature of both our Chapter and Region. Vince continued to work with both our Chapter and the Northeast Region until he retired from Kideney. Soon after, he left the CSI entirely, not interested in any secondary role. Besides a great many Chapter awards for his service, he is a recipient of the Northeast Region's most prestigious honor the 'Distinguished Service Award' the representative medal he held in great esteem. Vince will always be regarded as one of the great forces that shaped the Buffalo Chapter and the Northeast Region. Vince was also a good friend with whom I shared much laughter and many achievements. He is missed.

### Roland Barrett

Roland Barrett was a member of the Worcester Chapter of the CSI. Being curious as to what exactly 'The Region' was I began to attend some of the Region Conferences. It was through these events that I got to know many people in the Northeast Region. In fact, I really got to know Vince and Carol Bernard at a Syracuse Chapter Conference that was held in Lake Placid who introduced me to Roland and Patti. Roland enjoyed finance and spent much time in that endeavor with his Chapter and also the Region. His warm friendship enabled a kinship between our two Chapters. Roland took it upon himself to travel to our Chapter to explain to our board how a new monetary structure between Chapters, Regions and the National Organization was beneficial to all and really a shifting of responsibilities. Roland was a consummate volunteer and wore many hats in his Chapter as well. Many service awards adorn his office at home. He is also recognized for his value to the Region as a recipient of the Northeast Region's 'Distinguished Service Award'. Roland cannot be replaced!

The Editor

**Please, do not fail to read following attached article "Doctors of Design –Why Design Professionals Should Act More Like Physicians" by our own Kevin O'Beirne, PE, CSI, CCS, CCCA, of the Engineering Firm of HDR in Buffalo. Dr. Bones from Star Trek, Dr. Robert Hartley, Dr. Michaela Quinn, Dr. Kildare and Dr. Beverly Crusher all make appearances!**



## Promote Your Presence in *THE SCOPE*

For as little as \$100.00 for ten issues a business card can be placed on the inside pages of *THE SCOPE*. The ad size would be approximately 3”x 2”. The newsletter is sent by e-mail to over 100 members as well as individuals in sundry aspects of the Construction Industry. Our sponsors benefit from exposure to Architects, Builders, Engineers, Product Representatives, Construction Managers, Construction Inspectors, Building Owners and Educators in our immediate area as well as the Northeast.

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We are currently accepting enrollments for the Fall of 2021 to the Summer of 2022, but will include your information at no charge for the balance of our fiscal year which ends in June.



Article for *The Scope* (February 2021 issue)—newsletter of the Construction Specifications Institute's Buffalo-Western NY Chapter

## **Doctors of Design**

### ***Why Design Professionals Should Act More Like Physicians***

by Kevin O'Beirne, PE

In the *Star Trek* TV series and movies, the character Dr. Leonard "Bones" McCoy often said, "*Dammit Jim, I'm a doctor, not a miracle worker!*" Engineers and architects, however, appear to often have the following viewpoint: "*Dammit Jim, I'm a design professional, not a doctor!*" Pity, because design professionals would do well to mimic certain professional behaviors commonly exhibited by physicians.

#### **"Doctors of Design"**

Physicians and design professionals have a lot in common. Both sell their time and expertise instead of a physical product. Both are in the business of solving complex problems for their clients. Both are frequently in the position of having to use (hopefully) cost-effective means to diagnose clients' problems and determine suitable solutions. In short, architects and engineers are "doctors of design", and should act accordingly. Basic means of accomplishing this are presented in this article.

Virtually everyone, except, perhaps Superman and Wonder Woman, has visited a physician and understands how doctors typically behave with their clients. Even if you have never seen the individual physician before, doctors enter the examination room and take it for granted that the patient accepts them as an experienced, qualified medical professional who has the necessary expertise to diagnose and solve the patient's problem.

In contrast, architects and engineers, upon being introduced to a new or prospective client, often see fit to immediately present their qualifications and resume', hoping they pass the initial muster to be accepted as reasonably competent. This immediately places design professionals in a subordinate position relative to problem solving. Perhaps this tendency bespeaks greater insecurity than physicians typically evidence. Interesting how physicians and design professionals approach their clients from the start, isn't it?



**DeForest Kelley as Dr. "Bones" McCoy on *Star Trek*: "Dammit Jim, I'm an engineer, not a doctor!"** (1966-1969, Paramount Television)

Doctors, architects, and engineers are all required to place foremost in all their endeavors the public's health, safety, and welfare. Each is bound by a mandatory code of ethics setting forth required professional conduct. Failure to comply with the mandatory code of conduct can result in severe disciplinary action by each profession's state licensing board.

Design professionals and physicians are required by the state to possess a valid license and registration to perform in their respective profession as independent practitioners. Both are required to prominently display their professional license and registration at their principal place of business for inspection by their clients and the public. This is because the government has deemed medical and design practitioners to each require substantial, highly specialized, technical education, training, and experience to practice their respective professions. The government also mandates that doctors', engineers', and architects' failures have potential for impacts on public health, safety, and welfare that are so significant that only certain individuals—to be licensed and registered by the state—are allowed to practice as physicians and design professionals.

In practicing their profession, doctors and design professionals procure and maintain appropriate professional insurance in the event they make a mistake or omission. Physicians call it “medical malpractice insurance” whereas design professionals call theirs, “professional liability insurance”, but both are required for essentially the same reasons: clients deserve protection against incompetent or negligent design professionals and medical doctors.

Despite the numerous similarities between medical practice and design professionals, why do design professionals typically sell themselves short and act in a manner often very different from how their medical colleagues comport themselves?

## Advice on Risks

Most people are familiar with how their doctor acts in the examination room. The doctor asks several probing questions to identify your complaint or symptoms; will typically perform a physical examination; and finally render their advice. A doctor's advice, except for instructions on medication or preparation for a procedure, is often presented orally. When giving their recommendations, physicians often sit at a computer console and type a written record which they may later share with the patient, if you specifically request it or look it up via an online “patient portal”.



**Bob Newhart as Dr. Robert Hartley**  
on *The Bob Newhart Show*  
(1972-1978, MTM Entertainment)

Let's say, for example, the doctor advises you to go on a diet—perhaps your blood sugar level is rising, or your “bad” cholesterol is too high. “You should cut down on the fatty foods and eliminate between-meal snacks and get more exercise, too,” the doc advises. Perhaps not

fully understanding that you are currently receiving **Medical Advice**, you sigh and respond, “I know, I know. But I never have time to exercise. I'll try to do something, sort of, to eat better.”

As you speak, you often don't fully recognize the doctor at the console is typing furiously. What's the doc writing?

They are recording their advice and your reception of it, perhaps writing, "Told Mr. Jones to reduce fatty foods and snacks, and to get more exercise. Mr. Jones declined exercise and did not commit to substantive changes in diet."

Whoa! Is that what they're **really** typing? Well, it's probably something like that. Medical malpractice insurance is very expensive and no physician wants their premiums to increase because of claims asserted against them. With all those personal injury attorneys constantly advertising in almost every form of media that they will get you money for negligence by others, including medical professionals. You can probably bet your boots the doctor is writing into their records something similar to the hypothetical quote, above. Our modern, litigation-prone society virtually requires it.

So, why don't design professionals do the same thing? After all, aren't they "doctors of design"? Aren't architects' and engineers' premiums for professional liability insurance pretty high even if you have a spotless claims record? Aren't some clients' attorneys ready to send the design professional stern-sounding letters alleging possible negligence for a variety of situations, sometimes including garden-variety construction change orders? Yet, design professionals generally appear to act quite different from physicians when it comes to creating an appropriate record of risk-related advice and their clients' associated decisions.



**Jane Seymour as Dr. Michaela Quinn on  
*Dr. Quinn, Medicine Woman* (1993-1998, CBS Productions)**

Over the years, this writer has assisted dozens of design professional teams with issues of alleged negligence, always as an advisor to my employer's (a consulting engineering firm) legal counsel. In perhaps 90 percent of the cases in which I was involved, the design team lacked adequate documentation of their actions, their advice rendered to their client, and how their client accepted or rejected their advice. In short, as a profession, engineers and architects are often inadequate at recording their risk-related advice to their clients.

"Risk-related advice" may sound high-falutin' and rare; however, design professionals render it all the time. A civil-environmental engineer or an instrumentation and controls engineer may advise their client on the advantages, drawbacks, costs, accuracy, operating range, and maintenance requirements of certain types of flow meter to be used in monitoring a critical element of the client's process. An architect may advise a client on sustainable building materials in pursuit of a desired "green building" certification. There are many other examples.

The outcome of constructing a capital project based on such advice is uncertain and, therefore, these discussions **are** risk-based, professional advice. If the advice is poor, the client is likely to be unhappy or worse, especially if the client has an aggressive lawyer.

Frequently, the closest things to a record between the project owner and their design professional are basis-of-design reports (for engineers) or preliminary project descriptions (for architects) and minutes of design progress meetings and construction progress meetings.

Basis-of-design reports or preliminary project descriptions are often a principal deliverable and subject to review and approval by the client. While reports often present data and recommendations, they rarely afford the design professional the opportunity to frankly summarize their client's preferences that are not fully in accordance with the design professional's advice.



**Richard Chamberlain as the title character on *Dr. Kildare* (1961-1966), MGM Television)**

Progress meeting minutes are, of course, typically shared with all participants of the subject meeting. Thus, when the design professional drafts the minutes of such meetings, it is perhaps understandable they rarely include text that may provoke or upset their client.

Nevertheless, meeting minutes and oral conversations should have an associated, written record of the risk-related advice given by the design professional to its client, whether such advice is concerning materials of construction, how aggressively to pursue enforcing contractual terms and conditions on a contractor experiencing delays or a contractor that performed defective work, or the anticipated accuracy of the design professional's pre-bidding opinion of probable construction cost, or many other risk-related matters.

In addition, each time significant, substantive advice is rendered, design professionals may wish to consider providing to clients the engineering or architectural equivalent of medical doctors' "informed consent" forms. Doctors routinely do this in their practice to present important recommendations to patients. For significant matters, doctors often obtain their patient's written acknowledgment on the medical consent form, documenting the discussion of the risks of a certain procedure or recommendation. While this makes sense from the standpoint of risk management and professional liability, many clients of design professionals may be taken aback if presented with an engineering or architectural "informed consent acknowledgement" form. Do not try it without virtually knowing in advance how the client will accept it. Design professionals can, however, **orally** provide the equivalent of "medical informed consent" during discussions with their clients, and subsequently document their discussions.

An important difference between physicians and design professionals is doctors usually do not have a written contract with their clients, giving physicians greater freedom to act on informed consent. If a patient does not sign a medical informed consent acknowledgement, most doctors will refuse to provide further treatment. Less likely is the design professional who would attempt to stop performing their services due to a client's refusal to sign an informed consent

acknowledgement; after all, design professionals typically have a somewhat lengthy written contract for their services. In contrast, most people do not sign a contract with their physician. Most professional services contracts prohibit the architect or engineer from suspending services without proper cause. However, design professionals can and should make records of such discussions with their clients as a means of managing their own risk.

Reflect on your previous visit with a physician where the doctor discussed with you a recommended procedure or course of action. In most cases, the physician will spend two or three times as much time outlining the specific risks and alternatives, in addition to providing their medical opinion. All communications are documented at the time in your medical records created in the ordinary course of business. In fact, this form of prudent risk management is likely to be considered a generally accepted professional practice.

Beyond ordinary meeting minutes, correspondence, and telephone conversation records, it may also be appropriate for design professionals to maintain additional records in their project file. Patient privacy statutes help to protect the dissemination of physicians' records, but no such protection exists for design professionals' files. In fact, when the project is for a public owner, the design professional's files may possibly be a matter of public record. How can sensitive information in the design professional's files be protected?

When information in the architect's or engineer's files is sensitive and protection from disclosure is desired, it should be discussed directly with the design professional's legal counsel and perhaps, upon transmittal to the design professional's attorney, be labeled, "privileged and confidential" to help avoid the embarrassment of the document being shared during the discovery phase of a lawsuit or other dispute. Labeling a document as "privileged and confidential" should be done judiciously and intentionally. Documents should **not** routinely be so labeled. For the status of "privileged and confidential" to have meaning, any transmittals of documents or information so labeled **must** be directed to the design professional's legal counsel and should **never** be forwarded or transmitted without advance direction from the design professional's attorney. Again, the **attorney** should be intended recipient.

Laws and regulations governing attorney-client privilege and confidentiality vary considerably and engaging with counsel via privileged communication when appropriate is a prudent course of action. While it may be very important to maintain a clear record of advice and the client's reactions and directions to the design professional, considerable care must be exercised in preparing such documents, in close coordination with the design professional's legal counsel.

When an a procedure exists for establishing and maintaining such a record in the design professional's project files, for the record to be of value to the design professional, project managers must consistently update it as does the physician each time they meet with their patient. Project managers need to have an adequate understanding of risk-related matters and, with their project's design discipline leaders, render appropriate advice throughout the project and create a clear, concise record of discussions and decisions. Drafting such entries promptly is critical, while memories of discussions are fresh and relevant. When appropriate, preparing **and maintaining** project "risk registers" may be an effective form of documentation.

## Practice within Your Profession and Expertise

Like physicians, design professionals should always understand the limits of their licensure, expertise, and insurance coverage, and should **never** practice outside them. Thus, architects and engineers should typically not give, or be construed as giving, advice on matters such as appropriate types of insurance and required minimum insurance coverage amounts; nor should they endeavor to interpret laws; or otherwise practice in the areas of law, insurance, accounting, financial advisory services, or any other professions other than that for which they are licensed, experienced, and insured. After all, you've never seen a physician attempting to practice architecture, have you?

Doctors are also often quick to refer a patient to a specialist physician or to say, "You need more tests so we have better data on which to make a diagnosis." Design professionals should do the same. Regardless of whether you believe the owner is counting on you to "know it all", or if they perhaps expect their design professionals to be omniscient and present excellent recommendations on a shoestring budget without much testing and data, design professionals should not be pushed into a corner from which they are to render professional services without necessary disclaimers or specific conditions. In this respect, too, design professionals can often learn from physicians' professional behavior and the doctrine of "informed consent".



**Gates McFadden as  
Dr. Beverly Crusher on  
*Star Trek: The Next Generation*  
(1987-1994, Paramount  
Domestic Television)**

## Conclusions

There are many similarities in the practice of the design professions and medicine. In certain matters, design professionals can perhaps improve their professional behavior while simultaneously reducing their liability by better-documenting risk-related advice and their clients' decisions. However, because the practice of medicine and engineering and architecture also have important differences, design professionals should consult with their legal counsel to determine how best to handle creation and proper risk management of records of sensitive information.

***Acknowledgements:*** The author gratefully acknowledges the advice and comments on drafts of this article from Gerard P. Cavaluzzi, Esq., Vice President and General Counsel at Kennedy/Jenks Consultants, Inc. (Croton-on-Hudson NY).

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