



# New Mexico– Ethics including NM Laws and Rules for Professional Engineers

Four (4) Continuing Education Hours  
Course #NM101

Approved Continuing Education for Licensed Professional Engineers

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## Course Description:

The course is designed as a distance learning interactive course that enables the practicing professional engineer to 1) revisit the emphasis that his or her professional license has a direct and vital impact on the safety, health, and welfare of the public and 2) keep up to date on the legal aspects that govern the practice of engineering in the state of New Mexico.

The New Mexico four (4) hours Ethics and Laws & Rules course satisfies the continuing education requirement of minimum of two (2) hours of Ethics.

This course also overviews the New Mexico State laws governing the profession of engineering. An extra two (2) hours is awarded and applies to the overall 30 hours of continuing education required for each NM licensed engineer.

The course consists of three major sections as outlined below.

1. Code of Ethics
  - a. General Code of Ethics for all Professional Engineers
2. Ethics Case Reviews
3. New Mexico Laws and Rules
  - a. Engineering and Surveying Practice Act - *New Mexico Statutes Ch. 61, Article 23.*
  - b. Professional Engineering and Professional Surveying Rules - *New Mexico Administrative Code Title. 16, Ch. 39*

## Objectives:

The objectives of this course is to:

1. Familiarize the student with the standards of professional behavior for adherence to the highest principles of ethical conduct,
2. Apply those principles in reviewing real case studies,
3. Familiarize the student with the laws and rules regulating the practice of engineering in the state of New Mexico.

Upon successful completion of the course, the student will be well versed to exhibit the highest standards of honesty and integrity deemed paramount to his or her license and profession as well as be well versed in the New Mexico state laws governing the practice of the engineering profession

## Grading:

Students must achieve a minimum score of 70% on the 30-question online quiz to pass this course.

The quiz may be taken as many times as necessary in order to successfully pass this course.

Note: The quiz can be completed over multiple sessions if required by selecting "Save Quiz" prior to exiting session.

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# Code of Ethics

## Preamble

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Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.

### I. Fundamental Canons

Engineers, in the fulfillment of their professional duties, shall:

- 1) Hold paramount the safety, health, and welfare of the public.
- 2) Perform services only in areas of their competence.
- 3) Issue public statements only in an objective and truthful manner.
- 4) Act for each employer or client as faithful agents or trustees.
- 5) Avoid deceptive acts.
- 6) Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

### II. Rules of Practice

#### **1. Engineers shall hold paramount the safety, health, and welfare of the public.**

- 1) If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
- 2) Engineers shall approve only those engineering documents that are in conformity with applicable standards.
- 3) Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
- 4) Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.

5) Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.

6) Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.

## **2. Engineers shall perform services only in the areas of their competence.**

1) Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.

2) Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.

3) Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.

## **3. Engineers shall issue public statements only in an objective and truthful manner.**

1) Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.

2) Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.

3) Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

## **4. Engineers shall act for each employer or client as faithful agents or trustees.**

1) Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

- 2) Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.
- 3) Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
- 4) Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
- 5) Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

#### **5. Engineers shall avoid deceptive acts.**

- 1) Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.
- 2) Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

### **III. Professional Obligations**

#### **1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.**

- 1) Engineers shall acknowledge their errors and shall not distort or alter the facts.
- 2) Engineers shall advise their clients or employers when they believe a project will not be successful.

- 3) Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
- 4) Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
- 5) Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.

## **2. Engineers shall at all times strive to serve the public interest.**

- 1) Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.
- 2) Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.
- 3) Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.
- 4) Engineers are encouraged to adhere to the principles of sustainable development<sup>1</sup> in order to protect the environment for future generations.

## **3. Engineers shall avoid all conduct or practice that deceives the public.**

- 1) Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact.
- 2) Consistent with the foregoing, engineers may advertise for recruitment of personnel.
- 3) Consistent with the foregoing, engineers may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

## **4. Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.**

- 1) Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.

2) Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the engineer has gained particular specialized knowledge on behalf of a former client or employer.

**5. Engineers shall not be influenced in their professional duties by conflicting interests.**

1) Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.

2) Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.

**6. Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.**

1) Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.

2) Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.

3) Engineers shall not, without consent, use equipment, supplies, laboratory, or office facilities of an employer to carry on outside private practice.

**7. Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.**

1) Engineers in private practice shall not review the work of another engineer for the same client, except with the knowledge of such engineer, or unless the connection of such engineer with the work has been terminated.

2) Engineers in governmental, industrial, or educational employ are entitled to review and evaluate the work of other engineers when so required by their employment duties.

3) Engineers in sales or industrial employ are entitled to make engineering comparisons of represented products with products of other suppliers.



**8. Engineers shall accept personal responsibility for their professional activities, provided, however, that engineers may seek indemnification for services arising out of their practice for other than gross negligence, where the engineer's interests cannot otherwise be protected.**

- 1) Engineers shall conform with state registration laws in the practice of engineering.
- 2) Engineers shall not use association with a nonengineer, a corporation, or partnership as a "cloak" for unethical acts.

**9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.**

- 1) Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.
- 2) Engineers using designs supplied by a client recognize that the designs remain the property of the client and may not be duplicated by the engineer for others without express permission.
- 3) Engineers, before undertaking work for others in connection with which the engineer may make improvements, plans, designs, inventions, or other records that may justify copyrights or patents, should enter into a positive agreement regarding ownership.
- 4) Engineers' designs, data, records, and notes referring exclusively to an employer's work are the employer's property. The employer should indemnify the engineer for use of the information for any purpose other than the original purpose.
- 5) Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminars.

# Engineering Ethics Case Reviews

## CASE 1: INCOMPLETE PLANS AND SPECIFICATIONS – ENGINEER, GOVERNMENT, AND CONTRACTOR RESPONSIBILITIES

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### Facts:

Engineer A responds to an RFP from a small local public agency to build a new dam to be financed in part by a federal grant. Engineer A's firm's impressive brochure and personal interview results in the award of a contract for the design, drawings, and specifications.

The signed and sealed drawings and specifications are ultimately approved by Engineer B of the engineering staff of the federal agency funding the project, and the project is thereafter duly advertised for bids and a contract is awarded to the low bidder, Hi-Lo Construction. The local public agency does not have the in-house technical resources to review the drawings and specifications.

At the pre-construction conference, it is pointed out by Engineer C, owner of Hi-Lo Construction, that much of the design detail is lacking in the drawings and specifications and that Hi-Lo Construction declares that certain parts of the project are "unbuildable" without major changes. Engineer A generally agrees with Hi-Lo's characterization, but in his defense responds that he felt pressured to deliver the drawings and specifications on a specified date, but did not inform anyone as to their incompleteness. While much of the information was missing from the drawings and specifications, Engineer A was confident that sufficient federal funds (and not local funding) would cover any potential increased costs.

### References:

*Section I.1. - Code of Ethics: Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health and welfare of the public.*

*Section II.3.a. - Code of Ethics: Engineers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony, which should bear the date indicating when it was current.*

*Section II.5. - Code of Ethics: Engineers shall avoid deceptive acts.*

*Section III.1.b. - Code of Ethics: Engineers shall advise their clients or employers when they believe a project will not be successful.*

*Section III.2.b. - Code of Ethics: Engineers shall not complete, sign or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.*

## **Discussion:**

The Board has considered cases involving similar situations in the past. In BER Case No. 82-5, where an engineer employed by a large defense industry firm documented and reported to his employer excessive costs and time delays by sub-contractors, the Board ruled that the engineer did not have an ethical obligation to continue his efforts to secure a change in the policy after his employer rejected his reports or to report his concerns to proper authority, but has an ethical right to do so as a matter of personal conscience. The Board noted that the case did not involve a danger to the public health or safety, but related to a claim of unsatisfactory plans and the unjustified expenditure of public funds. The Board indicated that it could dismiss the case on the narrow ground that the NSPE Code does not apply to a claim not involving public health and safety, but that was too narrow a reading of the ethical duties of engineers engaged in such activities. The Board also stated that if an engineer feels strongly that an employer's course of conduct is improper when related to public concerns, and if the engineer feels compelled to blow the whistle to expose facts as he sees them, he may well have to pay the price of loss of employment. In this type of situation, the Board felt that the ethical duty or right of the engineer becomes a matter of personal conscience, but the Board was unwilling to make a blanket statement that there is an ethical duty in these kinds of situations for the engineer to continue the campaign within the company and make the issue one for public discussion.

As in Case No. 82-5, the issue does not allege a danger to public health or safety, but is premised upon a claim of unsatisfactory plans and the unjustified expenditure of public funds. In Case No. 82-5, the Board found that, while the Code did not require disclosure, the engineer did have an ethical right to pursue the matter further, even to the point of public disclosure. Unlike Case No. 82-5, this case does not involve a conflict with the ethical requirement of confidentiality, but concerns the affirmative responsibility of engineers to complete plans in conformity with applicable engineering standards and avoid deceptive acts.

While the Board certainly hopes that the facts involved in this case are very unique and do not represent more than a small fraction of public design and

construction projects in the United States, it appears that the facts as presented in this case are, unfortunately, not as unique as one might hope.

It is clear that Engineer A had an obligation to provide a complete set of design drawings and specifications on the project in which Engineer A was engaged. Unlike what is required on some projects (e.g., design/build or construction contracts with specific design delegation clauses or provisions) where the engineer is expected to only design a certain percentage of the project prior to the selection of the contractor, here, Engineer A was fully required to provide the complete design on the project. Engineer A's bold assertion that the work was incomplete, but that this was due to time pressures and his expectation that Federal funds would be awarded to complete the work is wholly unconvincing. Engineer A was selected for his expertise, which presumably included Engineer A's ability to fully perform the work based on project time parameters.

Engineer A's comment about Federal funds borders on fraud and misrepresentation and is a clear violation of the NSPE Code.

Engineer B's approval of Engineer A's incomplete plans is troubling, although we do not know all of the facts and circumstances relating to the decision to approve. Engineers have an obligation to perform services within their area of competence. If Engineer B was not able to perform the necessary reviews of Engineer A's work, Engineer B should have provided this information to a supervisor who would have assigned an appropriate engineer to perform the review. Not possessing adequate competency to perform a task is not in and of itself a violation of the NSPE Code, but the failure to recognize the lack of competency and take appropriate action to address the situation is a violation of the NSPE Code.

Finally, the Board believes that Engineer C's actions in bidding on an "unbuildable" contract is also very troubling. Presumably, Engineer C had an opportunity to review the bidding documents which included appropriate engineering drawings, plans, and specifications. From such a review, Engineer C should have had a sense of what would be necessary to complete the project. If the engineering documents were incomplete or inadequate, then Engineer C's bid should have reflected that fact and contained appropriate bid items for additional services required to complete the work for the benefit of the owner. In addition, Engineer C could have requested further clarification from the owner or Engineer A in order to better understand the engineering drawings.

As an engineer and a contractor presumably, Engineer C had the necessary background and experience to carefully evaluate the engineering drawings as well as other aspects of the work in order to make an informed decision as to whether to bid

on the project. Engineer C had no one to fault but himself for the problems Engineer C encountered in attempting to build the project. Engineer C submitted the low bid on the project, presumably knowing inadequacies of the documents as well as the obvious risks involved.

## CASE 2: INCOMPLETE PLANS AND SPECIFICATIONS

### Use of P.E. Designation Not Licensed In State in Which Complaint Is Filed

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#### **Facts:**

Engineer A is a safety engineer for a federal agency. He is responsible for independently overseeing the proper implementation of worker and nuclear safety programs in the agency's facilities, which are located in many different states, including the state in which Engineer A is licensed, State Y. Engineer A is not required to be licensed by the federal agency, but has become licensed because of his personal commitment to the engineering profession.

Engineer A has never used his seal in the course of his employment. When Engineer A moves to State Z, he does not obtain an engineering license in State Z. Engineer A reads a newspaper account about LMN Engineering, a subcontractor to the federal agency in which he works, having a conflict of interest with the agency. Engineer A, acting on his ethical obligation to report violations of the NSPE Code of Ethics to a public authority, files a complaint against LMN Engineering. In the text of the complaint, Engineer A indicates that he is licensed in State Y but not licensed in State Z and signs the letter "Engineer A, P.E."

Engineer A is thereafter notified by the State Z engineering licensure board that his use of the title "P.E." in the letter is inappropriate because he is not licensed in State Z.

#### **References:**

*Section II.1. - Code of Ethics: Engineers shall hold paramount the safety, health, and welfare of the public.*

*Section II.1.e. - Code of Ethics: Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*

*Section II.3. - Code of Ethics: Engineers shall issue public statements only in an objective and truthful manner.*

*Section II.3.b. - Code of Ethics: Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.*

*Section III.3.a. -Code of Ethics:Engineers shall avoid the use of statements containing a material mis-representation of fact or omitting a material fact.*

## **Discussion:**

The use of appropriate engineering titles has long been an important issue within the engineering profession. Misuse of engineering titles has the effect of misleading and deceiving the general public, as well as diminishing the image and stature of qualified engineering professionals. In recent years, efforts have been undertaken to educate individuals and companies about the inappropriate use of engineering titles or references by many engineering organizations and state engineering licensure boards. State engineering licensure boards have also increasingly taken a stricter position on the use of the reference, "P.E.," by licensed engineers not licensed in the state in which the reference is being used. In fact, some states have developed guidelines on appropriate use of the "P.E." reference.

The NSPE Board of Ethical Review has had recent occasion to consider the use of appropriate engineering titles. For example, the Board has had three occasions to consider cases involving alleged misrepresentation of credentials or status. BER Case No. 90-4 involved the question of whether it was ethical for Engineer Z, a principal in an engineering firm, to continue to represent Engineer X as an employee of his Firm. Engineer X had been employed by Firm Y, a medium-sized engineering consulting firm controlled by Engineer Z. Engineer X was one of a few engineers in Firm Y with expertise in hydrology, but the firm's work in the field of hydrology did not constitute a significant percentage of its work. Engineer X, an associate with the firm, gave two weeks notice of her intent to move to another firm. Thereafter, Engineer Z continued to distribute a brochure identifying Engineer X as an employee of Firm Y and list Engineer X on the firm's resume.

In concluding that Engineer Z's actions were not unethical, the Board noted that under the facts of the case, there was no suggestion that any of the brochures or other promotional material describe Engineer X as a "key employee" in the firm. Nor was there any effort or attempt on the part of Firm Y to highlight the activities or achievements of Engineer X in the field of hydrology. While the facts reveal that Engineer X was one of the few engineers in the firm with expertise in the field of hydrology, Engineer X was not the only engineer in the firm who possessed such expertise. In addition, it appeared that this area of practice did not constitute a significant portion of the services provided by Firm Y. Therefore, the Board concluded

that the inclusion of Engineer X's name in the firm's brochure and resume did not constitute a misrepresentation of "pertinent facts."

Importantly, however, in BER Case No. 90-4, the Board went on to note that "We must make clear that we are not condoning the failure of an engineering firm to correct material (brochures, resumes, etc.) which might have the unintentional effect of misleading clients, potential clients, and others. While we recognize the realities of firm practice and the logistical problems involved in marketing and promotion, we do believe it is important for firms to take actions to expeditiously correct any false impressions which might exist." The Board continued by noting that "we believe engineering firms that use printed material as part of their marketing efforts should take reasonable steps to assure that such written matter is as accurate and up-to-date as possible. In the case of marketing brochures and other similar materials, errata sheets, cover letters, strike-outs and, if necessary, reprints should be employed within a reasonable period of time to correct inaccuracies, particularly where a firm has reason to believe that a misunderstanding might occur. Firms that fail to take such measures run the risk of breaching ethical behavior."

Later, in BER Case No. 91-9, the Board considered a case involving Engineer A, who misrepresented his educational credentials. In carefully considering earlier BER opinions, the Board again noted that the issue of falsification or misrepresentation of academic or professional qualifications is a core ethical issue because it goes to the heart of engineering ethics—the protection of the public health and safety through the establishment of rules of conduct that help to assure that the public receives the highest quality engineering services possible.

The Board has noted its deep concern over situations and circumstances in which an individual expressly or implicitly falsifies or misrepresents academic or professional qualifications to employers, clients, or members of the public.

More recently, in BER Case No. 97-8, Engineer A was licensed as a professional engineer in State B, the state in which Engineer A resided. Engineer A was about to retire from his full-time employment with ENG Co. As part of this transition and because Engineer A would no longer be engaged in the practice of engineering under his state's law, Engineer A planned to discontinue his professional engineering license, which was paid for by his former employer. Engineer A planned to continue serving on several local governmental boards. Because of his association with and the pride he had for engineering, Engineer A wanted to continue to use the P.E. designation after his name on his board business card and on the board's letterhead. Engineer A took pride in his longstanding status as a professional engineer and believed he would be giving professional engineering added recognition by including the reference on the

letterhead, which included other individuals such as attorneys and architects. State B did not have a provision in its law addressing the issue of “inactive status.” In reviewing this issue, the Board noted that at first blush, the facts appeared to present a set of circumstances that would dictate an obvious result. It would appear on its face that an individual who has a close affinity with the engineering profession during his or her lifetime should be permitted to continue to use the P.E. designation after retirement. Once earned, it would seem unjust to deny one the right to call oneself a professional engineer (P.E.), particularly where the individual is seeking to enhance the recognition of professional engineers and professional engineering.

However, upon further examination, the Board deemed the issue to be more complex than first thought and raised the question of misrepresentation of credentials or status. The facts in BER Case No. 97-8 were quite different in degree than those involved in the earlier cases reviewed, and the Board noted that the facts did involve a degree, albeit slight, of misrepresentation. While it was true that Engineer A had demonstrated the necessary qualifications to be licensed as a professional engineer, Engineer A made a conscious and intentional decision to cease maintaining his status as a professional engineer in his state. While the Board recognized and appreciated Engineer A's desire to enhance the status and image of all professional engineers by indicating his professional status, they believed it was important that this status be represented in a manner that is above reproach, particularly because of the very public nature of Engineer A's position on several local governmental boards. The Board concluded that at a minimum, Engineer A should have indicated his inactive or retired status next to the P.E. designation. To do otherwise would create a misleading impression that Engineer A was currently licensed under state law in the jurisdiction in which he resided, and this could potentially cause embarrassment to all professional engineers. There was nothing demeaning or derogatory for an engineer to provide this straightforward and simple clarification in his status. To do so would clearly be consistent with the letter and the spirit of the law and avoid any possible questions or doubts about any actions, however unintentional, to mislead or deceive anyone concerning Engineer A's current status as an engineer. The Board concluded that it would be ethical for Engineer A to continue to use the P.E. designation after his name, as long as Engineer A indicated his inactive or retired status next to the P.E. designation, and as long as this was done in compliance with the state engineering licensing laws and regulations.

Turning to the facts in the instant case, the Board believes that the conclusion reached in BER Case No. 97-8 is partly applicable to the discussion in the present case. As noted earlier, the Board recognizes that state engineering licensure boards are becoming increasingly strict on the use of engineering titles and references. However,



in view of Engineer A's clarification in the body of his letter to the engineering licensure board concerning his licensure status in states Y and Z, and the fact that the complaint letter was sent to a limited group of individuals, the Board believes that Engineer A was not attempting to mislead or deceive the board or any other group or individual concerning his licensure status. Instead, the Board believes Engineer A's actions were probably an oversight, or at worst, a misunderstanding of the law or requirements of State Z.

Therefore, the Board cannot conclude that Engineer A's actions, although criticized by a state engineering licensure board, amount to a violation of the NSPE Code. At the same time, the Board must caution all engineering licensees on the need to be familiar with the technical requirements contained in applicable state engineering licensure statutes and regulations to avoid unintended violations of the law.

The NSPE Code of Ethics is a national code of ethics and this Board believes the NSPE Code obligates NSPE members to report ethical violations to the appropriate authorities in whatever jurisdiction the NSPE member observes the violation. This obligation is separate and apart from the obligation a professional engineer may have under state law.

As to the second question, Engineer A's actions are fully consistent with the professional and ethical obligation to hold paramount the health, safety and welfare of the public. While this obligation is codified in state laws, its application cannot be restricted within state boundaries. The NSPE Code of Ethics is a national code of ethics and this Board believes the NSPE Code obligates NSPE members to report ethical violations to the appropriate authorities in whatever jurisdiction the NSPE member observes the violation. This obligation is separate and apart from the obligation a Professional Engineer may have under state law.

## CASE 3: RESPONSIBLE CHARGE WORKING PART-TIME FOR FIRM

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### FACTS:

Engineer A is a licensed professional engineer and land surveyor in state A. Engineer A is associated with a firm, XYZ Engineering and Surveying (which offers professional engineering and surveying), as the licensed professional engineer in charge under the state's certificate of authorization requirement. The firm has not performed any work outside of state A. Engineer A's understanding of the law of state A is that a licensed professional engineer is to be in "responsible charge" of engineering and a person licensed as a professional land surveyor is to be in "responsible charge" of land surveying. These persons in responsible charge can be a principal of the firm or an employee of the firm under the state's laws.

The agreement Engineer A has with XYZ Engineering and Surveying is that XYZ grants Engineer A 10% share of the stock in the firm and as compensation for his engineering services, Engineer A will receive 5% of the gross billings for engineering work for which the seal of a licensed engineer in responsible charge of engineering is required. This agreement is contingent on the understanding that if any one of the three principals of XYZ Engineering and Surveying becomes licensed as a professional engineer in state A, the agreement will become void and the 10% stock will be returned to XYZ Engineering and Surveying.

In addition to working with XYZ Engineering and Surveying, Engineer A has a full-time engineering position for a state governmental agency. This work requires no engineering license. Engineer A works thirty-five hours per week on a flex-time basis and provides about twenty hours per week supervising engineering services at the firm, plus an additional twelve hours of work on the weekends. Engineer A does not normally go into the field for XYZ Engineering and Surveying but is available for consultation, twenty-four hours a day.

Both the state governmental agency and the engineering firm are aware of Engineer A's activities as a dual employee and do not object to these activities.

### REFERENCES:

*II.2.b. - Code of Ethics: Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.*

*II.2.c. - Code of Ethics: Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.*

*II.4.d. - Code of Ethics: Engineers in public service as members, advisors or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.*

*II.4.e. - Code of Ethics: Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.*

*II.5.a. - Code of Ethics: Engineers shall not falsify their qualifications or permit misrepresentation of their, or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers or past accomplishments.*

*III.1.c. - Code of Ethics: Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.*

*III.6.a. - Code of Ethics: Engineers shall not request, propose, or accept a commission on a contingent basis under circumstances in which their judgment may be compromised.*

*III.6.b. - Code of Ethics: Engineers in salaried positions shall accept part-time engineering work only to the extent consistent with policies of the employer and in accordance with ethical considerations.*

## **DISCUSSION:**

The circumstances faced by Engineer A in this case are not unlike circumstances occasionally faced by other engineers who seek to explore career opportunities beyond a full-time position. A key question involved in such activities is whether the engineer can devote sufficient attention to the responsibilities involved in an ethical manner.

Engineers are frequently required to provide oversight and review of the work of others under their supervision and sign and seal the drawings. As noted in NSPE Code Section II.2.b. it states that engineers are not permitted to affix their signatures to any plans and documents dealing with subject matter in which they lack competence, nor to

any plan or document not prepared under their direction and control. This principle is one of the most basic and fundamental ethical principles to which professional engineers are required to adhere because it goes to the heart of the public trust upon which their professional status is based.

The BER has in the past had occasion to consider cases similar to this case. In BER Case No. 91-8, an Engineer's firm was retained by a major fuel company to perform site investigations in connection with certain requirements under state and federal environmental regulations. Under the procedures established by the Engineer's firm, the site visits would be conducted by engineering technicians under direct supervision of Engineer A who would perform all observations, sampling, and preliminary report preparation. Engineering technicians would also take photographs of the sites. No professional engineers were present during the site visits. Following site visits, all pertinent information and material was presented to Engineer A who was competent in this field. Following a careful review, Engineer A would certify that the evaluations were conducted in accordance with engineering principles.

In considering whether it was ethical for Engineer A to certify that the evaluations were conducted in accordance with engineering principles, the Board noted that the NSPE Code of Ethics is very clear concerning the requirements of engineers not to affix their signatures to any plans or documents dealing with subject matter in which the engineers lack competence, nor to any plan or document not prepared under their direction and control (See NSPE Code Section II.2.b.). The BER concluded that it was ethical for the engineer to certify that the evaluations were conducted in accordance with engineering principles so long as the engineer exercising direction and control performs a careful and detailed review of the material submitted by the engineer's staff and there has been full compliance with NSPE Code Section II.2.c.

Also, in BER Case No. 86-2, an engineer was the chief engineer within a large engineering firm, and affixed his seal to some of the plans prepared by licensed engineers working under his general direction who did not affix their seals to the plans. At times, the engineer also sealed plans prepared by unlicensed graduate engineers working under his general supervision. Because of the size of the organization and the large number of projects being designed at any one time, the engineer found it impossible to give a detailed review or check of the design. He believed he was ethically and legally correct in not doing so because of his confidence in the ability of those he had hired and who were working under his general direction and supervision. By general direction and supervision, the engineer meant that he was involved in helping to establish the concept, the design requirements, and review elements of the design or project status as the design progressed. The engineer was consulted about technical

questions and he provided answers and direction in these matters. In evaluation of the facts and circumstances in this case, the Board focused on the language in the NSPE Code Section II.2.b. relating to the obligation of engineers not to affix their signature to documents or plans ... not prepared under their "direction and control." Following a careful review of the plain meaning of the terms "direction" and "control," the Board concluded that the terms have meaning which, when combined, would suggest that an engineer would be required to perform all tasks related to the preparation of the drawings, plans, and specifications in order for the engineer ethically to affix his seal. The Board also noted at the time that the NCEES Model Law would require that an engineer must be in "responsible charge" -- meaning "direct control and personal supervision of engineering work" -- in order to affix his seal. After careful evaluation, the Board concluded that it would not be ethical for the engineer to seal plans that have not been prepared by him or which he has not checked and reviewed in detail.

In BER Case No. 90-6, the Board considered two separate fact situations involving the signing and sealing by an engineer of documents prepared using a CADD system. In considering the facts, the Board noted that the rendering of the Board's decision in BER Case No. 86-2 raised a considerable degree of discussion within the engineering community because to many it appeared to be inconsistent with customary and general prevailing practices within the engineering profession and would therefore place a significant number of practitioners in conflict with the provisions of the Code. The Board noted at the time that the Code of Ethics is not a static document and must reflect and be in consonance with general prevailing practices within the engineering profession. Said the Board, "the Code must not impose an impossible or idealistic standard upon engineers, but rather must establish a benchmark of reasonable and rational methods of practice for it to maintain its credibility and adherence." The Board determined that the conclusion in BER Case No. 86-2 should be modified to reflect actual practices which exist within engineering and not impose an impossible standard upon practice. Said the Board, "Were the Board to decide BER Case No. 86-2 today, the Board would conclude that it was not unethical for the engineer in that instance to seal plans that were not personally prepared by him as long as those plans were checked and reviewed by the engineer in some detail. The Board does not believe this represents a reversal of the Board's decision in BER Case No. 86-2, but rather a clarification, particularly for those who were troubled by the Board's discussion and conclusion in that case."

Once again, we follow the reasoning in BER Case No. 90-6 and its clarification of BER Case No. 86-2. Under the facts in the instant case, we believe it was appropriate for Engineer A to sign and seal the drawings under the facts and circumstance involved in this case. Engineer A is providing approximately thirty-two hours each week of

engineering services to the firm and is on call twenty-four hours a day to provide engineering field services for the benefit of the firm and its clients. His responsibilities appear to be consistent with the state's certificate of authorization requirements, are limited to professional engineering services and do not involve land surveying services. As noted under the facts, Engineer A has a flexible schedule with his other employer and presumably is able to adjust his schedule to meet the needs of his employers. While it appears that Engineer A may be stretching his role as an engineer in responsible charge for the firm, without more evidence to suggest improper activity, we are hesitant to conclude that Engineer A was violating the NSPE Code of Ethics.

The manner in which Engineer A is compensated does not appear to contain any specific provision which would necessarily run afoul of the NSPE Code of Ethics. Under NSPE Code Section III.6.a., engineers are not permitted to request, propose or accept a commission on a contingency basis under circumstances in which their judgment may be compromised. Although it could be argued that Engineer A's receiving 5% of the gross billings for engineering work for which the seal of a licensed engineer is required could potentially compromise Engineer A's judgment, we believe that would stretch this provision of the NSPE Code of Ethics beyond its actual intent. Otherwise, virtually any compensation scheme that was not based upon the number of hours worked could be held to be in violation of the NSPE Code of Ethics and that would be an impractical conclusion.

In addition, the Board views the transfer provision ("The agreement is contingent on the understanding that if any one of the three principals of XYZ Engineering and Surveying becomes licensed as a professional engineer in state A, the agreement will become void and the 10% stock will be returned to XYZ Engineering and Surveying") is not of a nature that would compromise Engineer A's judgment. Instead, the Board views this provision as a means of the firm's principals' maintaining control over the management of the firm.

With regard to Engineer A's dual role as an governmental employee and a private employee, as noted under the facts, both the state governmental agency and the engineering firm are aware of Engineer A's activities as a dual employee and do not object to these activities. However, the Board must note that should a conflict-of-interest arise (e.g., where Engineer A or the firm's activities conflict with the governmental employer's activities or interests) Engineer A will need to carefully address those activities consistent with NSPE Code Sections III.6.b., II.4.d., II.4.e. and other applicable provisions of the NSPE Code.

As has been noted in cases similar to this one, while the actions of Engineer A may be consistent with the NSPE Code of Ethics, it is critical for an engineer under

these circumstances to understand the need to perform a careful review of all pertinent material before signing and sealing appropriate plans and drawings. We are of the view that so long as the professional engineer exercising direction and control performs a careful and detailed review of the material submitted by the engineer's staff, there has been compliance with NSPE Code Section II.2.c. In addition, Engineer A must carefully review and understand all state requirements regarding “responsible charge” activities including possible local office and employment restrictions.

# New Mexico Statutes

## *Ch. 61, Article 23 - Engineering and Surveying Practice Act*

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### **61-23-1. SHORT TITLE.**

Chapter 61, Article 23 NMSA 1978 may be cited as the "Engineering and Surveying Practice Act".

### **61-23-2. DECLARATION OF POLICY.**

The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978]. A person who engages in the business or acts in the capacity of a professional engineer or professional surveyor in New Mexico, except as otherwise provided in Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 23 NMSA 1978. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable.

### **61-23-3. DEFINITIONS.**

As used in the Engineering and Surveying Practice Act [61-23-1 NMSA 1978]:

- A. "**approved**" or "**approval**" means acceptable to the board;
- B. "**authorized company officer**" means an employee of a business entity duly authorized by the business entity to contractually obligate the business entity;



- C. "**board**" means the state board of licensure for professional engineers and professional surveyors;
- D. "**business entity**" means a corporation, professional corporation, limited liability corporation, professional limited liability corporation, general partnership, limited partnership, limited liability partnership, professional limited liability partnership, a joint stock association or any other form of business, whether or not for profit;
- E. "**conviction**" or "**convicted**" means a final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- F. "**engineer**", "**professional engineer**", "**consulting engineer**", "**licensed engineer**" or "**registered engineer**" means a person who is qualified to practice engineering by reason of the person's intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience and who is licensed by the board to practice engineering;
- G. "**engineering accreditation commission**", means the engineering accreditation commission of the accreditation board for engineering and technology, incorporated, or any successor commission or organization;
- H. "**engineering**", "**practice of engineering**" or "**engineering practice**" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

I. "**engineering committee**" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

J. "**engineer intern**" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

K. "**fund**" means the professional engineers' and surveyors' fund;

L. "**incidental practice**" means the performance of other professional services that are related to a licensee's work as an engineer;

M. "**person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or a legal or commercial entity;

N. "**professional development**" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge to maintain licensure;

O. "**responsible charge**" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

P. "**surveying**", "**practice of surveying**" or "**surveying practice**" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls that will be the basis for all geospatial data used for future design surveys, including construction staking surveys, surveys to lay out horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods, and construction surveys of engineering and architectural public works projects;

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

(6) the depiction and transmittal by paper or digital means of any digital geospatial data for use in geographic information systems or land information systems that purports to be the authoritative location of points or features of a survey regulated by the Engineering and Surveying Practice Act, but excludes data used solely for a cadastre, such as assessment and tax mapping purposes, or general representations of surveyed or historic data used for mapping purposes, such as land parcels and built infrastructure;

Q. "**surveying committee**" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] as it pertains to the practice of surveying, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

R. "**surveyor**" or "**professional surveyor**" means a person who is qualified to practice surveying by reason of the person's intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

S. "**surveyor intern**" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act;

T. "**surveying work**" means the work performed in the practice of surveying; and

U. "**supplemental surveying work**" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way and easements and the dependent or independent surveys or resurveys of the public land system.

#### **61-23-4. CRIMINAL OFFENDER'S CHARACTER EVALUATION.**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Engineering and Surveying Practice Act.

#### **61-23-5. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS -- MEMBERS -- TERMS.**

A. There is created the "state board of licensure for professional engineers and professional surveyors" that shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term.

#### **61-23-6. BOARD MEMBERS -- QUALIFICATIONS.**

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years as a professional engineer licensed in New Mexico, or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years, and shall be a professional engineer licensed in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years as a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated.

### **61-23-7. REIMBURSEMENT OF BOARD MEMBERS.**

Each member of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

### **61-23-8. REMOVAL OF MEMBERS OF BOARD.**

The governor may remove, after notice and hearing, any member of the board for misconduct, incompetency, neglect of duty, malfeasance in office or for any reason prescribed by law for removal of state officials.

### **61-23-9. BOARD -- ORGANIZATION -- MEETINGS.**

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed professional engineers and one of the public members, who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may be substituted for a non-attending member in order to have a quorum. The committee shall elect a chair and vice chair from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a "surveying committee" composed of the three members of the board who serve as licensed professional surveyors and one of the public members, who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may serve on this committee. The committee shall elect a chair and vice chair

from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board. Committee actions shall be reported to the board.

D. There shall be a joint engineering and surveying standing committee of the board composed of two members from the professional engineering committee, the public member and the chair, and two members from the professional surveying committee, the public member and the chair. If the public member is currently the chair of either committee, the vice chair will serve as the professional member on the standing committee.

E. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chair, a vice chair and a secretary, who shall be members of the board. A member of the board shall not be elected to the same office for more than two consecutive years. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal.

### **61-23-10. DUTIES AND POWERS OF THE BOARD.**

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and to exercise the authority granted the board in that act. The board is the sole state agency with the power to certify the qualifications of professional engineers and professional surveyors. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. The professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

D. The professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

E. The joint engineering and surveying standing committee shall have the exclusive authority over practice disputes between engineers and surveyors to determine if any proposed rules of professional responsibility are exclusive to the practice of engineering or exclusive to the practice of surveying so that rulemaking authority is delegated to the engineering committee or to the surveying committee. Determination of exclusive practice of engineering or surveying requires an affirmative vote by no less than three members of the committee. If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.

F. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chair's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

G. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

H. The board may subject an applicant for licensure to such examinations as it deems necessary to determine the applicant's qualifications.

I. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

J. No action or other legal proceedings for damages shall be instituted against the board, any board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

K. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

L. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical rules of the board and the board of examiners for architects.

#### **61-23-11. RECEIPTS AND DISBURSEMENT-- FUND CREATED.**

A. The "professional engineers' and surveyors' fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and shall pay that money to the state treasurer for deposit in the fund. Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the chairman and attested by the executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose.



## **61-23-12. RECORDS AND REPORTS.**

A. The board shall keep a record of its proceedings and a register of all applications for licensure, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

- (1) examination material for examinations not yet given;
- (2) file records of examination problem solutions;
- (3) letters of inquiry and reference concerning applicants;
- (4) board inquiry forms concerning applicants;
- (5) investigation files where any investigation is ongoing or is still pending; and
- (6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chairman, secretary and executive director.

## **61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND SURVEYORS.**

A roster showing the names and addresses of all licensed professional engineers and professional surveyors shall be maintained by the board and shall be placed on file with the secretary of state and the state commission of public records and made available to the public.

## **61-23-14. CERTIFICATION AS AN ENGINEER INTERN -- REQUIREMENTS.**

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that the applicant:

- (1) is of good moral character and reputation;
- (2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and
- (3) has three references, one of whom shall be a licensed professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that the applicant has:

- (1) graduated from a board-approved, four-year engineering curriculum; or
- (2) graduated from a board-approved, four-year engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering.

### **61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER; REQUIREMENTS.**

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the applicant:

- (1) is of good moral character and reputation;
- (2) has five references, three of whom shall be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board; provided that a satisfactory written explanation is given.

B. An applicant may be licensed through examination if the applicant can demonstrate the following:

- (1) the applicant is certified as an engineer intern and has at least one of the following:
  - (a) received a bachelor's degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has four years of engineering experience subsequent to receiving the degree;
  - (b) received a bachelor's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years engineering experience in the United States subsequent to receiving the degree;
  - (c) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience subsequent to receiving the degree;
  - (d) received a master's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills through evaluation the required curricular content and educational standards as defined by the national council of examiners for engineering and surveying and has at least three years engineering experience in the United States subsequent to receiving the degree;
  - (e) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least two years of engineering experience subsequent to receiving the degree; or
  - (f) at least six years of board-approved engineering experience after graduation from a school offering a board-approved, four-year engineering technology curriculum accredited by the technology accreditation commission of the accreditation board for engineering and technology, including the two years for engineer intern certification; or
- (2) the applicant is not certified as an engineer intern and has at least one of the following:
  - (a) received a bachelor's degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has twelve years of engineering experience subsequent to receiving the degree;

(b) received a master's degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least six years of engineering experience subsequent to receiving the degree; or

(c) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least four years of engineering experience subsequent to receiving the degree.

C. Upon successfully completing the examination, required experience and all the requirements as noted in this section, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if the applicant:

(1) is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States, provided the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and can satisfactorily demonstrate to the board competence in current engineering standards and procedures.

*61-23-15., 61-23-16. Repealed.*

### **61-23-17. APPLICATION AND EXAMINATION FEES.**

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of the applicant's technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. No fees shall be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude.

### **61-23-18. ENGINEERING -- EXAMINATIONS.**

The examinations for engineering certification and licensure shall be held at least once a year at a time and place the board directs. The engineering committee shall determine the passing grade on examinations.

### **61-23-19. ENGINEERING -- LICENSE -- SEALS.**

A. The board shall issue licenses pursuant to the provisions of the Engineering and Surveying Practice Act [this article]. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to the engineer's work as an engineer, provided the engineer shall not make any representation as being an architect or as performing architectural services unless duly registered as such.

D. The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of an engineering project. A professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a professional engineer only on a project for which the engineer is providing engineering design services.

### **61-23-20. ENGINEERING -- LICENSURE AND RENEWAL FEES -- EXPIRATIONS.**

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial licenses shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional engineers. Licensure renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. Each licensee shall have the responsibility to notify the board of any change of address within thirty days of the change.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the

licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1 but the delinquent licensee shall not practice during this period. Should the licensee apply to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired. The board may adopt rules for inactive and retired status.

### **61-23-21. PRACTICE OF ENGINEERING.**

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the practice, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through a business entity other than a partnership, services or work involving the practice of engineering may be offered through that business entity; provided that the person in responsible charge of the activities of the business entity that constitute engineering practice is a professional engineer who has authority to bind such business entity by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, or that are issued by or for such business entity, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual or business entity may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual or business entity is qualified to practice engineering in accordance with the requirements of the Engineering and Surveying Practice Act.

D. In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional engineer or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

### **61-23-22. ENGINEERING -- EXEMPTIONS.**

A. A New Mexico licensed architect who has complied with all of the laws of New Mexico relating to the practice of architecture has the right to engage in the incidental practice, as defined by regulation, of activities properly classified as engineering; provided that the architect shall not make any representation as being an engineer or as performing engineering services; and further provided that the architect shall perform only that part of the work for which the architect is professionally qualified and shall use qualified professional engineers or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, regulations and ordinances of the state or its political subdivisions pertaining to all documents bearing the architect's professional seal.

B. An engineer employed by a business entity who performs only the engineering services involved in the operation of the business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the business entity offers engineering services to the public. Performance of engineering on public works projects pursuant to Section 61-23-26 NMSA 1978 constitutes engineering services to the public and is not exempt.

### ***61-23-23. Repealed.***

### **61-23-23.1 AUTHORITY TO INVESTIGATE -- CIVIL PENALTIES FOR UNLICENSED PERSONS -- ENGINEERING.**

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and who acts in the capacity of a professional engineer within the meaning of the Engineering and Surveying Practice Act. A valid

license is required for a person to act as a professional engineer or to solicit or propose to perform work involving the practice of engineering

B. If after the hearing the board determines that based on the evidence the person committed a violation pursuant to the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7,500.00) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved by the board's decision may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor, and upon conviction the person shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction.

## **61-23-24. ENGINEERING -- VIOLATIONS -- DISCIPLINARY ACTION -- PENALTIES -- REISSUANCE OF LICENSE.**

A. The board may suspend, refuse to renew or revoke a license impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

- (1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;
- (2) attempted to use the license of another;
- (3) given false or forged evidence to the board or to a board member for obtaining a license;
- (4) falsely impersonated any other licensee of like or different name;
- (5) attempted to use an expired, suspended or revoked license;



- (6) falsely purported to be a professional engineer by claim, sign, advertisement or letterhead;
- (7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;
- (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board;
- (9) been convicted of a felony; or
- (10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered" or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections F and H of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. A person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against a licensed professional engineer. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits; provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or a board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a license to a person whose license has been revoked or suspended; provided that a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of the reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a non-licensee.

K. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county where the violation occurs.

### **61-23-24.1. ENGINEERING -- PROFESSIONAL DEVELOPMENT.**

The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board.

### ***61-23-25. Repealed.***

### **61-23-26. PUBLIC WORK.**

It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving engineering unless the engineering is under the responsible charge of a licensed professional engineer.

## **61-23-27. ENGINEERING -- PUBLIC OFFICER -- LICENSURE REQUIRED.**

No person except a licensed professional engineer shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that includes the performance or responsible charge of engineering work.

*61-23-27.1, 61-23-27.2. Repealed.*

## **61-23-27.3. CERTIFICATION OF SURVEYOR INTERN -- REQUIREMENTS.**

A. An applicant for certification as a surveyor intern shall file the appropriate application and demonstrate that the applicant:

- (1) is of good moral character and reputation;
- (2) has obtained at least a senior status in a board-approved four-year curriculum in surveying; and
- (3) has three references, two of whom shall be licensed professional surveyors having personal knowledge of the applicant's knowledge and experience.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

C. Upon successfully completing the examination and an approved four-year surveying curriculum, then by action of the board, the applicant may be certified as a surveyor intern.

D. The certification of surveyor intern does not permit the intern to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

E. If otherwise qualified, a graduate of a board-approved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of four years of combined office and field board-approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the four years of required experience, but work prior to or while attending school may be counted toward the four years of required experience at the discretion of the board.

## **61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR -- GENERAL REQUIREMENTS.**

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application to demonstrate that the applicant:

- (1) is of good moral character and reputation;
- (2) is certified as a surveyor intern;
- (3) has at least four years of board-approved surveying experience if graduated from a four-year, board-approved surveying curriculum as defined by board rule;
- (4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience; and
- (5) if graduated from a board-approved, four-year related science curriculum as specifically defined by board rules, has a minimum of four years of board-approved surveying experience subsequent to certification as a surveyor intern.

B. The applicant's experience pursuant to Paragraphs (3) and (5) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if the applicant is currently licensed as a professional surveyor in:

- (1) the District of Columbia, another state, a territory or a possession of the United States, provided that:
  - (a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and that the standards required for licensure and the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and
  - (b) the applicant has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

- (2) a foreign country and can demonstrate to the board's satisfaction:
- (a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and
  - (b) competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico.

### **61-23-27.5. SURVEYING -- APPLICATION AND EXAMINATION FEES.**

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act [this article] shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of his technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude.

### **61-23-27.6. SURVEYING -- EXAMINATIONS.**

The examinations for surveying certification and licensure shall be held at least once a year at a time and place the board directs. The surveying committee shall determine the passing grade on examinations.

### **61-23-27.7. SURVEYING -- LICENSURE AND RENEWAL FEES -- EXPIRATIONS.**

A. Licensure for surveyors shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. Initial licenses shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to keep the license current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 31, but the delinquent licensee shall not practice during this period. Should the licensee wish to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired.

#### **61-23-27.8. SURVEYING LICENSES AND SEALS.**

A. The board shall issue surveying licenses pursuant to the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

#### **61-23-27.9. SURVEYING -- PRACTICE OF SURVEYING -- MANDATORY DISCLOSURE.**

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice surveying in the state except as provided in the Engineering and Surveying Practice Act..

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] as individuals or through a business entity. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, or that are issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional surveyor pursuant to the Engineering and Surveying

Practice Act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a business entity other than a partnership, services or work involving the practice of surveying may be offered through the business entity; provided the person in responsible charge of the activities of the business entity that constitute the practice of surveying is a professional surveyor who has authority to bind the business entity by contract; and further provided that all drawings or reports that are involved in such practice, or that are issued by or for the business entity, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

D. An individual or business entity may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual or business entity is qualified to practice surveying in accordance with the requirements of the Engineering and Surveying Practice Act.

E. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

- (1) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or
- (2) the absence of professional liability insurance coverage.

### **61-23-27.10. SURVEYING EXEMPTIONS.**

An employee of a business entity who performs only the surveying services involved in the operation of the business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act [this article]; provided that neither the employee nor the business entity offers surveying services to the public; and provided further that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land. Performance of surveying on public works projects pursuant to Section 61-23-27.13 NMSA 1978 constitutes surveying services to the public and is not exempt.

## **61-23-27.11. SURVEYING -- VIOLATIONS -- DISCIPLINARY ACTIONS -- PENALTIES -- REISSUANCE OF LICENSES.**

A. The board may suspend, refuse to renew or revoke the license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand a professional surveyor who is found by the board to have:

- (1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act [61-23-1 NMSA 1978];
- (2) attempted to use the license of another;
- (3) given false or forged evidence to the board or to any board member for obtaining a license;
- (4) falsely impersonated any other licensee of like or different name;
- (5) attempted to use an expired, suspended or revoked license;
- (6) falsely purported to be a professional surveyor by claim, sign, advertisement or letterhead;
- (7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;
- (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;
- (9) been convicted of a felony; or
- (10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.

B. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

C. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act [61-1-1 NMSA 1978] is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. A person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against a professional surveyor. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of



the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the professional surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board, or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or a board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a license to a person whose license has been revoked or suspended; provided that a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee determined by the board.

H. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both.

I. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a non-licensee.

J. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs.

**61-23-27.12. SURVEYING -- PROFESSIONAL DEVELOPMENT.**

The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board.

**61-23-27.13. SURVEYING--PUBLIC WORK.**

It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor.

**61-23-27.14. SURVEYING -- PUBLIC OFFICER -- LICENSURE REQUIRED.**

No person except a licensed professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that requires the performance or responsible charge of surveying work.

**61-23-27.15. AUTHORITY TO INVESTIGATE -- CIVIL PENALTIES FOR UNLICENSED PERSONS -- SURVEYING.**

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and who acts in the capacity of a professional surveyor within the meaning of the Engineering and Surveying Practice Act. A valid license is required for a person to act as a professional surveyor or to solicit or purport to perform work involving the practice of surveying.

B. If after the hearing the board determines that based on the evidence the person committed a violation under the Engineering and Surveying Practice Act [61-23-1 NMSA 1978], it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7, 5000) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor and upon conviction the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction.

### **61-23-28. REFERENCE MARKS -- REMOVAL OR OBLITERATION -- REPLACEMENT.**

When it becomes necessary by reason of the construction of public or private works to remove or obliterate any triangulation station, benchmark, corner, monument, stake, witness mark or other reference mark, it shall be the duty of the person in charge of the work to cause to be established by a licensed surveyor one or more permanent reference marks, which shall be plainly marked as witness corners or reference marks as near as practicable to the original mark and to record a map, field notes or both with the county clerk of the county wherein located, showing clearly the position of the marks established with reference to the position of the original mark. The surveys or measurements made to connect the reference marks with the original mark shall be of at least the same order of precision as the original survey.

#### ***61-23-28.1. Repealed.***

### **61-23-28.2 SURVEYING -- RECORD OF SURVEY.**

A. For those surveys that do not create a division of land but only show existing tracts of record, except in the instance of re-monumentation as specified in the board's minimum standards for boundary surveys, within sixty calendar days of the completion of the survey, a professional surveyor shall cause to be recorded at the office of the county clerk a survey entitled "boundary survey" that shall:

- (1) contain a printed certification of the professional surveyor stating that "this is a boundary survey of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act" [47-6-1 NMSA 1978];
- (2) identify all tracts by the uniform parcel code designation or other designation established by the county assessor, if applicable;
- (3) meet the minimum standards for surveying in New Mexico as established by the board; and

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches.

B. Fees for recording a boundary survey shall be in conformance with Section 14-8-15 NMSA 1978.

C. For those surveys that do create a division of land, the survey shall be completed in conformity with the board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be recorded at the office of the county clerk within sixty calendar days after completion of the survey or approval by the governing authority.

*61-23-29. Repealed.*

### **61-23-30. RIGHT OF ENTRY ON PUBLIC AND PRIVATE PROPERTY -- RESPONSIBILITY.**

The engineers and surveyors of the United States and licensed professional engineers and surveyors of the state shall have the right to enter upon the lands and waters of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property or for injuries resulting from negligence or malice caused on account of that entry.

### **61-23-31. LICENSURE UNDER PRIOR LAWS.**

Any person holding a valid license as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern or surveyor intern granted by the board pursuant to any prior law of New Mexico shall not be required to make a new application or to submit to an examination, but shall be entitled to the renewal of licensure upon the terms and conditions of the Engineering and Surveying Practice Act. [this article].

#### **61-23-31.1. GOOD SAMARITAN.**

A. A professional engineer or professional surveyor who voluntarily, without compensation, at the request of a state or local public official acting in an official capacity, provides aircraft structure, structural, aeronautical, electrical, mechanical, other engineering services or surveying at the scene of a declared national, state or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, flood, collapse or other similar disaster or catastrophic event, such as a terrorist act, shall not be liable for any personal injury, wrongful death, property damage or other

loss caused by the engineer's or surveyor's acts, errors or omissions in the performance of any surveying or engineering services for any structure, building, piping or other engineered system, publicly or governmentally owned.

B. The immunity provided shall apply only to a voluntary engineering or surveying service that occurs within thirty days of the emergency, disaster or catastrophic event, unless extended by an executive order issued by the governor under the governor's emergency executive powers. Nothing in this section shall provide immunity for wanton, willful or intentional misconduct.

### **61-23-32. TERMINATION OF AGENCY LIFE -- DELAYED REPEAL.**

The state board of licensure for professional engineers and professional surveyors is terminated on July 1, 2023 pursuant to the Sunset Act [Chapter 12, Article 9 NMSA 1978]. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2024. Effective July 1, 2024, the Engineering and Surveying Practice Act is repealed.

### **61-23-33. NOTICE OF BOUNDARY SURVEY -- CERTAIN LAND GRANTS.**

A. If a boundary survey of property is conducted within or bordering the common lands of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978, the surveyor shall give written notice by certified mail to the board of trustees or commissioners of the affected land grant prior to recording the boundary survey or plat with the county clerk. The notice shall indicate where and when the boundary survey will be or was conducted.

B. The board of trustees or commissioners of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978 shall record with the county clerk of the county within which the land grant is located the address and contact information of the appropriate officer of the board or commission to which notice shall be given pursuant to Subsection A of this section. Any change in address or contact information shall be updated and recorded as soon as practicable to ensure that timely notice may be accomplished by certified mail.

C. A surveyor shall give proof of the notice required by Subsection A of this section by having the tracking number of the certified mailing and the address of the land grant as recorded with the county clerk acknowledged and recorded on the boundary survey or plat. A boundary survey or plat recorded pursuant to Section 61-2328.2 NMSA 1978 without proof of the notice required by Subsection A of this section shall not be considered a valid filing or recording of the boundary survey or plat.

# New Mexico Administrative Code

## *Title. 16, Ch. 39 - Professional Engineering and Professional Surveying Rules*

### Part 1 GENERAL PROVISIONS--PROFESSIONAL ENGINEERING AND SURVEYING ORGANIZATION AND ADMINISTRATION

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#### **16.39.1.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

#### **16.39.1.2 SCOPE:**

Provisions for Part 1 apply to staff and officers of the board and to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.

#### **16.39.1.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying."

16.39.1 NMAC applies to both engineering and surveying.

#### **16.39.1.4 DURATION:**

Permanent.

#### **16.39.1.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

#### **16.39.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 39 is to clearly define the organizational structure of the board, the types of meetings and order of business, the number needed for a

quorum, the duties of the officers, the responsibilities of the board, the preparation and distribution of a roster of licensed professional engineers and surveyors, the establishment of fees, and retired status.

#### **16.39.1.7 DEFINITIONS:**

A. "Category" means professional engineer or professional surveyor. B. "Branch" means discipline.

#### **16.39.1.8 THE BOARD:**

A. The name of this board shall be the state board of licensure for professional engineers and professional surveyors hereinafter referred to as the "board".

B. The official seal of the board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle is to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the state of New Mexico and the words, "state of New Mexico." The words, "board of licensure for professional engineers and professional surveyors", shall be contained between the two concentric circles.

C. The fiscal year of the board shall be July 1, through June 30 of the following calendar year.

#### **16.39.1.9 MEMBERS OF THE BOARD:**

Members of the board are not employees within the meaning of that term under the Governmental Conduct Act; however, they are public officers; therefore the Governmental Conduct Act applies to all board members.

#### **16.39.1.10 MEETINGS OF THE BOARD:**

A. Special and emergency meetings of the board may be called at any time by the chair of the board, or a majority of the board members; and meetings of either of the two committees may be called at any time by order of the respective chair of the professional engineering committee or the professional surveying committee or a majority of the committee members.

B. Proper public notice of all meetings shall be given in accordance with the provisions of the Open Meeting Act.

#### **16.39.1.11 ORGANIZATION OF THE BOARD:**

A. Annually, at the last meeting of the fiscal year, the board shall elect its officers, who shall take office on July 1.

B. Annually, at the first meeting after July 1, the chair of the board shall appoint from the board's members such additional committees as may be found appropriate by the board.

### **16.39.1.12 DUTIES OF THE BOARD, OFFICERS OF THE BOARD, AND THE EXECUTIVE DIRECTOR:**

A. The board shall act as a whole in all administrative, financial and personnel matters and any other activity not specifically related to the practices of engineering or surveying.

B. The board shall appoint an executive director who shall serve at the pleasure of the board.

C. The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of licensure, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

D. The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

E. The secretary of the board shall co-sign all certificates of licensure and in the absence or incapacity of the chair and vice-chair, exercise the duties and shall possess all the powers of the chair.

F. The executive director shall perform and supervise the following for the board and professional engineering and professional surveying committees:

(1) conduct and care for all correspondence in the name of the board, the professional engineering committee and the professional surveying committee;

(2) record and file all applications, certificates of licensure, examinations, licenses and revocations for both professional engineering and professional surveying committees;

(3) prepare and submit to the board, at the first meeting of each fiscal year for review and approval, an annual report of board activities and statistics for the preceding fiscal year, including a financial report; prepare the approved annual report for transmittal to the governor;

(4) keep a record of all meetings of the board and committees and maintain a proper account of the business of the board; a draft of the meetings' minutes shall be provided to each member for comment within ten working days after each meeting; a final draft shall be provided to each board member at the next meeting for final approval;



(5) receive and account for all funds and transfer same to state treasurer within 24 hours of receipt; authorize and approve payment by department of finance and administration invoices and vouchers for only those expenditures included in the board's approved operating budget;

(6) present and submit to the board at the first meeting of each fiscal year a financial report prepared by the rules of generally accepted accounting principles as of the preceding June 30th, such report to include the reporting of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts, expenses and expenditures of the board; upon being approved by the board, shall be included in the annual report and submitted to the governor;

(7) receive and review licensure applications for completeness for consideration by the respective committees;

(8) schedule and arrange for the administration of written examinations provided for in the Engineering and Surveying Practice Act, content of which having been approved by the board or respective professional engineering or professional surveying committees; when requested by the applicant, the director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and Surveying Practice Act and these rules; when necessary qualified assistance, approved by the board, may be retained for conduct of examinations;

(9) prepare and maintain a current roster on the board's website, and furnish copies to the public upon request and payment of a fee as determined by the board; in accordance with Section 61-23-13 NMSA 1978;

(10) prepare and maintain a current roster of business entities with an affidavit identifying the authorized company officer and the professional engineer or professional surveyor or both who is employed by the business entity and in the responsible charge;

(11) provide one week in advance of each meeting, drafts of the agenda of the meeting to each member of the board;

(12) publish an annual newsletter at a minimum;

(13) direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act; a written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting; this may be in the form of appropriate commentary recorded in the

minutes, supported by a separate file on the case; when necessary, qualified assistance, approved by the board, may be retained for conduct of investigations;

(14) file formal disciplinary actions upon approval by the board with the appropriate jurisdiction for prosecution of alleged violations of the act and the board's rules.

### **16.39.1.13 DUTIES OF THE OFFICERS OF THE PROFESSIONAL ENGINEERING AND PROFESSIONAL SURVEYING COMMITTEES:**

A. The chair shall preside at all meetings and shall otherwise perform all duties pertaining to the office of the chair.

B. The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

### **16.39.1.14 PROCEDURES AT BOARD MEETINGS AND COMMITTEE MEETINGS:**

A. The order of business may be as follows:

(1) board meetings:

- (a) public notice;
- (b) approval of agenda;
- (c) approval of minutes;
- (d) reports of committees;
- (e) communications;
- (f) old business;
- (g) new business;
- (h) complaints and violations;
- (i) adjournment;

(2) committee meetings:

- (a) public notice;
- (b) approval of agenda;
- (c) approval minutes;
- (d) reports of sub-committees;
- (e) communications;
- (f) old business;

- (g) new business;
- (h) complaints and violations;
- (i) applications;
- (j) adjournment.

B. Roberts' rules of order shall generally govern the procedure of the board and committee meetings except as otherwise provided for in Title 16, Chapter 39 of the New Mexico administrative code or the Engineering and Surveying Practice Act.

C. Board members may participate in a meeting of the board or committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in person at the meeting. Participation by telephone may only occur when it is difficult or impossible for board members to attend.

#### **16.39.1.15 ROSTER:**

The roster shall contain the following information for each licensee: legal name, street address or post office box number, city, state, zip code, class of licensure, discipline, status, and license number.

#### **16.39.1.16 FEES:**

A. A fee will be assessed to process an application for a license to practice, for enrollment as an engineering intern or surveying intern, and for examinations.

B. Examination fees shall be paid on or before the date specified by the board prior to the date of the scheduled examination. Said fees are earned fees and are not refundable if the applicant should fail to appear for the examination.

C. Renewal and application fees are earned fees and are not refundable.

D. All fees shall be set by the board. Changes in renewal fees, application fees, and examination fees shall become effective as designated by the board.

#### **16.39.1.17 STATUS OF LICENSURE:**

A. Retired status - a licensee shall become eligible for retired status with a waiver of renewal fees after meeting all the following qualifications:

- (1) retired from active practice;
- (2) at least 60 years of age;
- (3) have been a licensee for a continuous period of 20 years, at least 10 of which must have been in New Mexico; and

(4) the licensee has filed an application prescribed by the board for retired status prior to the expiration of the license.

B. Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the board, comply with the continuing professional development requirements; and if approved shall pay the appropriate fee.

C. Professional engineers and professional surveyors on "retired status" with the board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

D. Inactive status - a licensee shall become eligible for inactive status with a waiver of renewal fees and professional development requirements after meeting all the following qualifications:

(1) the licensee is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;

(2) the licensee has been a licensed professional engineer or surveyor in this jurisdiction for 10 consecutive years;

(3) the licensee has filed an application prescribed by the board for inactive status prior to the expiration of the license.

E. In the event a licensee on inactive status desires to return to practice within six years of acquiring inactive status, the licensee shall make proper application to the board, comply with the continuing professional development requirements (a minimum of 30 PDHs) and if approved shall pay the appropriate fee.

F. An inactive licensee who has maintained inactive status in excess of six consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the board. (In the event an inactive licensee does not maintain a current license in any jurisdiction for the six previous years prior to requesting active status, that person will be required to take the principles and practice of engineering (PE) examination or the principles and practice of surveying (PS) examination and the New Mexico surveying state specific exam.

## PART 2 CONTINUING PROFESSIONAL DEVELOPMENT

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### **16.39.2.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

### **16.39.2.2 SCOPE:**

Provisions for Part 2 apply to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.

### **16.39.2.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that the board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. 16.39.2 NMAC applies to both engineering and surveying. Sections 61-23-24.1 and 61-23-27.12, NMSA 1978 prescribe that "the board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure (Title 16, Chapter 39 of the New Mexico Administrative Code) of the board."

### **16.39.2.4 DURATION:**

Permanent.

### **16.39.2.5 EFFECTIVE DATE:**

December 1, 2001, unless a later date is cited at the end of a section or paragraph.

### **16.39.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 39 is to clearly define requirements of a professional development program for the renewal of professional engineer and surveyor licenses.

### **16.39.2.7 DEFINITIONS:**

A. Professional development hour (PDH) - a contact hour (nominal) of instruction or presentation. The PDH is the common denominator for other units of credit.

B. Continuing education unit (CEU) - unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours in approved continuing education course.

C. College/unit semester/quarter hour - credit for course in ABET approved programs or other related college course approved in accordance with Subsection E of 16.39.2.8 NMAC.

D. Course/activity - any qualifying course or activity with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice. Regular duties are not considered qualified activities.

E. Dual licensee - a person who is licensed as both a professional engineer and a professional surveyor. F. Ethics/business-related course or activity - any qualifying course or activity with content areas related to:

- (1) the awareness of ethical concerns and conflicts;
- (2) an enhanced familiarity with the codes of conduct;
- (3) an understanding of standards of practice or care; or
- (4) project management and risk-assessment management.

### **16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - REQUIREMENTS:**

The purpose of the continuing professional development requirement is to enhance the continuing level of professional development of professional engineers and professional surveyors.

A. Introduction - Every licensee shall meet the continuing professional development requirements of these regulations for professional development as a condition for license renewal.

B. Failure to meet requirements - Submission of professional development hours (PDHs) shall be made concurrently with license renewal failure to meet the PDH requirements will result in the rejection of renewal.

C. Requirements - each licensee is required to obtain thirty (30) professional development hours units during a biennium at least two (2) of which shall be in ethics. A maximum of ten (10) PDH units may be earned in self-directed study. If a licensee exceeds the biennial requirement in any biennial cycle, a maximum of fifteen (15) PDH units may be carried forward into the subsequent biennium in accordance with what has been previously reported to the board. PDH units may be earned from participation in qualifying activities as follows:

- (1) successful completion of college courses relevant to engineering and surveying;
- (2) successful completion of short courses, tutorials, webinar or distance-education courses offered for self-study, independent study or group study through

synchronous or asynchronous delivery method such as live, correspondence, archival or the internet;

(3) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, [or] conferences, or educational institutions;

(4) teaching or instructing in Paragraphs (1) through (3) of Subsection D of 16.39.2.8 NMAC;

(5) authoring published papers, articles, [or] books, or accepted licensing examination items;

(6) active participation in professional or technical societies;

(7) patents;

(8) active participation in educational outreach activities, pertaining to professional licensure or the surveying/engineering professions, as a speaker, instructor, presenter or panelist.

D. Units - the conversion of other units of credit to PDH units is as follows:

(1) one (1) college or unit semester..... 45 PDH;

(2) one (1) college or unit quarter hour..... 30 PDH;

(3) one (1) continuing education unit..... 10 PDH;

(4) one (1) hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences..... 1 PDH;

(5) for teaching, apply multiple of two (2) (teaching credit is valid for teaching a course or seminar for the first time only; teaching credit does not apply to full-time faculty);

(6) Publications:

(a) each published peer-reviewed paper or book in the licensee's area of professional practice.....10 PDH;

(b) each published paper or article other than Subparagraph (a) of Paragraph (6) of Subsection E of 16.39.2.8 NMAC in the licensee's area of professional practice.....5 PDH;

(7) active participation in professional and technical societies (each organization) 2 PDH;

(8) each patent.....10 PDH;

(9) One hour of outreach activity.... 1 PDH (max [4] 6PDH/biennium).F.

Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:

E. Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:

(1) credit for college or community college approved courses will be based upon course credit established by the college;

(2) credit for qualifying seminars, workshops, professional conventions, and courses/activities may be recommended by the professional societies;

(3) additional criteria for credit determination shall be included in the board policy.

F. Record keeping - each licensee is responsible for maintaining records that support credits claimed is the responsibility of the licensee. Records required include but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;

(2) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance;

(3) proof of membership in a technical organization issuing a publication as a part of its membership fee;

(4) a log indicating the medium used for a technical review, the subject of the review, the author or sponsoring organization, the date the review was conducted, a brief written summary of the contents of the reviewed material and the time spent on the review;

(5) the organization sponsoring a civic or community activity, the date and location of the activity, the subject of the activity and the licensee's involvement in the activity. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

G. Exemptions - a licensee may be exempt from the professional development educational requirements for One of the following reasons:

(1) new licensees by way of examination or comity/endorsement shall be exempt for the first year directly following the issuance of their license; PDH requirements will be prorated for any remaining portion of the licensing period beyond One year from the date of initial licensure;



(2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year; supporting documentation shall be furnished to the board;

(3) licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt; supporting documentation must be furnished to the board;

(4) licensees who have been approved for "retired status" by the board shall be exempt from the professional development hours required; in the event such a person elects to return to active practice of professional engineering or professional surveying, professional development hours must be earned before returning to active practice for the preceding biennial cycle.

H. Reinstatement - a licensee may bring a lapsed license to active status by obtaining all delinquent PDH units outstanding from the last biennium and complying with all other reinstatement requirements in the Engineering and Surveying Practice Act and the board's rules and regulations; however, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

I. Comity/out-of-jurisdiction resident - licensees who are residents of other jurisdictions shall meet the continuing professional development requirements of this board. These requirements may be deemed satisfied when a non-resident licensee provides evidence of having met requirements for another state engineering/surveying licensing board that are equal to or exceed the requirements of this board.

J. Dual licensees - the number of PDH units required shall remain the same for persons who hold a dual license as a professional engineer and professional surveyor; for persons who hold a dual license, half of the PDH units shall be in each profession.

K. Forms - all renewal applications will require the number of earned PDH units. The licensee must sign the renewal application, and submit with the appropriate fee.

## PART 3 ENGINEERING LICENSURE, DISCIPLINES, APPLICATIONS, EXAMS, PRACTICE, SEAL OF LICENSEE AND ENDORSEMENTS

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### **16.39.3.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

### **16.39.3.2 SCOPE:**

Provisions for Part 3 apply to any person certified as an engineer intern, licensed as a professional engineer, or to anyone applying for certification as an engineer intern or licensure as a professional engineer in New Mexico.

### **16.39.3.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. Subsection C of Section 61-23-10 NMSA 1978 states the professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act. Subsections A and B of Section 61-23-19 NMSA 1978 prescribe, "the board shall provide for the proper authentication of all documents. The board shall regulate the use of seals."

### **16.39.3.4 DURATION:**

Permanent.

### **16.39.3.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

### **16.39.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 39 is to clearly define the procedure for granting licensure to practice engineering or certification as engineer interns, identify and

provide procedures for engineering disciplines, applications and examinations, practice of engineering, seal of licensees and application by endorsement guidelines.

### **16.39.3.7 DEFINITIONS:**

Board-approved, four-year curriculum in engineering is defined as:

- A. "ABET" is defined as the accreditation board for engineering and technology.
- B. "Board-approved, four (4) -year curriculum in engineering" is defined as:
  - (1) engineering curriculum of at least four (4) years that has been accredited by ABET within at least three (3) years of the applicant's graduation with a bachelor's degree in engineering;
  - (2) curriculum not accredited by ABET but with the minimum number of engineering credits required for accreditation by ABET; and
  - (3) Curriculum required for graduate degree (master or doctoral) in engineering from an engineering program with an ABET-accredited bachelor's degree has successfully completed (as confirmed by letter from graduation committee) all requirements deficient to bachelor's degree in engineering.
- C. "Branch" refers to engineering disciplines as referred to in 16.39.3.8 NMAC.
- D. "Category" refers to the type of license such as professional engineer or professional surveyor as referred to in Subsections L and P of Sections 61-23-23 NMSA 1978.
- E. "Engineering accreditation commission" is defined as the engineering accreditation commission of ABET, or any successor commission or organization
- F. "Engineering discipline" is defined as a designated area of proficiency and competence in the practice of engineering.
- G. "FE exam" refers to the fundamentals of engineering exam.
- H. "NCEES" refers to the national council of examiners for engineering and surveying.
- I. "PE exam" refers to the principles and practice of engineering exam.

### **16.39.3.8 ENGINEERING DISCIPLINES:**

A. Licensure is granted as a professional engineer and shall be so stated on the certificate. Although the Engineering and Surveying Practice Act makes no specific designation as to the disciplines of engineering practice on the certificates as issued by the board, the records and roster of the board shall indicate the discipline(s) in which the licensee is competent to practice in accordance with this section. Only the discipline(s) of engineering for which the applicant has successfully been examined or approved by the professional engineering committee will be recorded.

B. Requests for engineering disciplines will be accepted from the following list; and the board's records and roster will be annotated with the corresponding alphabetical code:

- (1) architectural A
- (2) aeronautical B
- (3) civil C
- (4) agricultural D
- (5) electrical and computer E
- (6) network engineer F
- (7) geological G
- (8) chemical H
- (9) industrial I
- (10) mechanical M
- (11) mining N
- (12) metallurgical NN
- (13) petroleum P
- (14) control systems Q
- (15) structural R
- (16) nuclear T
- (17) fire protection U
- (18) environmental V
- (19) construction W
- (20) naval architecture and marineNm
- (21) software Sw

C. Other disciplines may be considered as reviewed and approved by the board.

D. A licensee may be listed in no more than three (3) disciplines of engineering. Subsequent to initial licensure, a licensee may apply for licensure in another discipline of engineering. The licensee shall demonstrate competence in that discipline and may be required to appear before the board. Demonstration of competence may be accomplished by presenting evidence as follows:

- (1) the licensee shall file a separate application for the additional discipline requested and pay an application fee for the additional application; and
- (2) complete the application forms to indicate clearly the education, experience, and three (3) acceptable personal references which will substantiate proficiency in the discipline for which the licensee is applying; experience and personal references must be stated;
- (3) an applicant for licensure by endorsement may initially apply for the three disciplines.

E. Structural discipline - except for an applicant with a B.S. degree with a structural option and a minimum of four (4) years of post-baccalaureate structural engineering experience, listing as a structural engineer may be obtained by having gained an acceptable engineering degree which included a minimum of six (6) hours of structural design; having licensure as a professional engineer; and having four (4) years of structural experience gained after licensure and acceptable to the board.

- (1) Passing the NCEES structural tests part I & II may be substituted for two (2) years of the required experience.
- (2) A master's degree in structures may be substituted for one (1) year of the required experience.
- (3) An applicant for licensure as a structural engineer by endorsement shall meet the requirements of Paragraphs (1) and (2) of Subsection D of 16.39.3.8 NMAC.

F. Specialty sub-disciplines - The professional engineering committee of the board may determine that the special practice of engineering within one (1) or more of the engineering disciplines in Subsection B of 16.39.3.8 NMAC requires unique training/education and experience to adequately protect the public safety and health, and the professional engineering committee of the board shall declare this special practice of engineering to be a specialty sub-discipline. The declaration of a specialty sub-discipline shall be based on a need identified by the state or any of its political subdivisions, availability of appropriate and timely training/education within the state of New Mexico, and the ability of the identification of a specialty sub-discipline to inform the public of the needed special practice of engineering. If the professional engineering committee of the board declares a specialty sub- discipline, after a rules hearing, the requirements for the special practice of engineering shall be included in Title 16, Chapter 39 of the New Mexico administrative code for engineering and surveying:

- (1) the specialty sub-discipline rules shall specify the training/education and experience requirements to obtain certification for the special engineering practice, including provisions for equivalent training when a particular course of

training/education is specified; in anticipation that more than one (1) discipline identified in Subsection B of 16.39.3.8 NMAC will qualify for the specialty sub-discipline, the rules shall identify which engineering disciplines in Subsection B of 16.39.3.8 NMAC, are most likely to qualify for the specialty sub- discipline;

(2) the board shall maintain a list of engineers who have been certified as meeting the requirements for the specialty sub-discipline; the list shall be available to the public upon request and pursuant to the inspection of public records; the professional engineering committee of the board shall establish a form for the application to obtain a certification for the specialty sub-discipline; upon approval by the professional engineering committee of the board, the qualified licensee's name shall be added to the list of licensees having the specialty sub- discipline;

(3) a licensee's name may be removed from the list of persons certified for the specialty sub- discipline, upon determination by the professional engineering committee of the board that the licensee no longer qualifies for the certification specialty sub-discipline; such removal shall be only after the appropriate process/hearing by the professional engineering committee of the board;

(4) the failure to obtain certification for the specialty sub-discipline shall not limit the practice of engineering within any of the engineering disciplines identified in Subsection B of 16.39.3.8 NMAC, and the failure to obtain certification in the specialty sub-discipline shall not constitute practice outside the licensee's area of competence; however, the failure to obtain certification for a specialty sub-discipline and a determination by the professional engineering committee of the board of inappropriate practice of engineering within the engineering specialty may be cause for determination that the engineering practice is not within the licensee's authorized discipline, and that appropriate disciplinary action can be taken;

(5) the certification of a specialty sub-discipline shall be for a period established by the professional engineering committee of the board, but not less than two (2) years or more than six (6) years; renewal of the specialty sub-discipline shall be concurrent with license renewal;

(6) the professional engineering committee of the board may remove the specialty sub- discipline from the rules for engineering and surveying, after a rules hearing, upon the finding that the training/education is no longer available or that the designation of the specialty sub-discipline is no longer needed to protect the public safety and health.

### **16.39.3.9 APPLICATION - ENGINEERING INTERN AND PROFESSIONAL ENGINEER:**

- A. Types of applications- licensure as a professional engineer or certification as an engineer intern require that an applicant present his or her qualifications on forms prescribed by the board.
- B. Any application, to be complete, must include acceptable replies from references, official transcripts provided directly from the colleges or universities attended; and if applicable, verification of prior examinations taken in other states.
- C. Board members shall not be used as references.
- D. Applications for engineering intern certification will be accepted after applicant has passed the fundamentals of engineering exam and graduated from a board-approved, four (4)-year engineering curriculum; or graduated from a four (4)-year engineering technology program that is accredited by the technical accreditation commission of the ABET, augmented by at least two (2) years of board-approved, post graduate engineering experience. Applications to take the fundamentals of engineering exam administered by the NCEES will not be required from the state board. Successful passing of the fundamentals of engineering exam does not ensure certification as an engineer intern.
- E. Applicants for the principles and practices of engineering examination with an ABET accredited engineering curriculum of four (4) years or more or equivalent as determined by the board shall have a minimum of two (2) years of post-baccalaureate experience acceptable to the professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. Applicants with an ABET accredited engineering technology degree shall have a minimum or four (4) years of post-baccalaureate experience acceptable to the board at the date of application and shall have passed the fundamentals of engineering examination.
- F. No applicant will be eligible to take the professional engineering examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.3.9 NMAC.
- G. Applicants for the professional engineering license will be accepted after applicant has passed the professional engineering exam and has fulfilled the education and experience requirements. Successful passing of the professional engineering exam does not ensure licensure as a professional engineer. To satisfy the statutory requirement for board-approved engineering experience prior to licensure, a candidate with an ABET accredited engineering curriculum of four (4) years or more or equivalent as determined by the board shall have four (4) years of post-baccalaureate experience acceptable to

the professional engineering committee, and a candidate with an ABET accredited engineering technology degree shall have six (6) years of post-baccalaureate experience acceptable to the professional engineering committee. After successfully completing the professional engineering examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 61.39.3.9 NMAC.

H. To update a professional engineer (PE) application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the professional engineering committee to verify each additional experience record.

I. Applications for licensure or certification by examination or comity/endorsement which have been approved by the professional engineering committee shall remain valid for three (3) years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional engineering committee's satisfaction, evidence that the applicants' qualifications are equal to, or exceed those in New Mexico.

K. All applicants for PE licensure shall also show proficiency in the English language and shall have a minimum of four (4)-years experience working in the United States under the direction of an engineer who will attest to the applicant's ability and knowledge as a competent engineer.

### **16.39.3.10 EXAMINATIONS--ENGINEERING INTERN AND PROFESSIONAL ENGINEER:**

A. Regularly scheduled examinations shall be held in accordance with NCEES examination schedules.

B. Any applicant that fails an examination will be notified by NCEES.

C. An applicant that has not achieved a passing score on an examination within the three (3) year application period shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one (1) of the following:

- (1) an "open book" examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;



(2) a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

(3) a "computer based" examination.

E. Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

F. Questions regarding the completed fundamentals of engineering examination or the principles and practice of engineering examination shall be directed to NCEES.

### **16.39.3.11 PRACTICE OF ENGINEERING:**

A. Neither a person nor an organization shall advertise, accept work or offer to practice engineering work in a discipline of engineering unless the person or a member of the organization has been approved by the professional engineering committee in the appropriate discipline and who is legally able to bind that organization by contract.

B. Neither persons nor organizations shall circumvent these rules. Licensees or organizations may advertise for work only in those disciplines of engineering in which they are approved by the professional engineering committee to practice. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

C. In the event a question arises as to the competence of a licensee in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board shall, either upon request of the licensee or of its own volition, require the licensee to pass an appropriate examination.

D. The professional engineering committee will consider the use of the terms, "engineer", "engineering", or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of engineering. The board will also consider the use of these terms or any modification or derivative of such terms in a corporation's name or its articles of incorporation or in a foreign corporation's certificate of authority as published by the New Mexico public regulation commission to constitute the offering of engineering services.

E. In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board within 30 days a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the

professional engineer or authorized company officer, the affidavit shall be revised within 30 days and resubmitted to the board.

### **16.39.3.12 SEAL OF LICENSEE:**

A. Each licensed professional engineer shall obtain a seal/stamp, which shall appear on all final engineering design drawings, the certification page of all specifications and engineering reports prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps signatures are not acceptable. Electronic signatures as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be the impression type seal, the rubber type, or a computer-generated facsimile. Computer generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

C. The design of the seal/stamp shall consist of three (3) concentric circles, the outermost circle being one (1) and one-half (1/2) inches in diameter, the middle circle being one (1) inch in diameter, and the innermost circle being one-half (1/2) inch in diameter. The outer ring shall contain the words, "PROFESSIONAL ENGINEER" and the licensee's name. The inner ring shall contain the words "NEW MEXICO". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable.

D. Professional engineers who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. For the purposes of the Engineering and Surveying Practice Act, a licensee of this board has "responsible charge of the work" as defined in Subsection M of Section 61-23-3, NMSA 1978 and may sign, date and seal/stamp plans, specifications, drawings or reports which the licensee did not personally prepare when plans, specifications, drawings or reports have been sealed only by another licensed engineer, and the licensee or persons directly under his personal supervision have reviewed the plans, specifications, drawings or reports and have made tests, calculations or changes in the work as necessary to determine that the work has been completed in a proper and professional manner.

F. The seal and signature shall be placed on work only when it is under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

G. When the document contains more than one (1) sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two (2) or more

licensees may affix their signatures and seals provided it is designated by a note under the seal specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet.

H. An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature.

I. The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. An engineer may densify, augment and enhance previously performed survey work by a surveyor for a project as defined in Subsection U of Section 61-23-3 NMSA 1978 of the Practice Act.

### **16.39.3.13 ENDORSEMENTS:**

For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional engineering committee will only recognize licensure granted by those authorities when the professional engineering committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineering and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-14 and 61-23-14.1, NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the district of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional engineer shall be as follows:

A. graduation from an approved engineering curriculum that fulfills the required content of the engineering education standard as defined by NCEES, four years of experience satisfactory to the professional engineering committee, and passing of the eight - hour fundamentals and eight - hour professional examinations; (2017 law);

B. graduation from an ABET accredited engineering technology program, six years of experience satisfactory to the professional engineering committee, and passing of the eight - hour fundamentals examination and eight - hour professional examination (1993 law);

C. graduation from an approved engineering curriculum, four years of experience satisfactory to the professional engineering committee, and passing of the eight hour fundamentals and eight - hour professional examinations; (1979 law and 1987 law);

- D. licensure prior to July 1, 2002, graduation from an ABET accredited engineering technology program or from an engineering or related science curriculum approved by the committee, six years of experience satisfactory to the professional engineering committee, and passing of the eight -hour fundamentals and eight -hour professional examination (1993 law);
- E. licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum other than the ones approved by the committee, eight years of experience satisfactory to the professional engineering committee, and passing of the eight -hour fundamentals and eight -hour professional examination (1979 law and 1987 law);
- F. licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, 20-years experience satisfactory to the professional engineering committee, and passing the eight -hour professional examination (1979 law and 1987 law);
- G. licensure prior to July 1, 1940, by 12 years of experience satisfactory to the professional engineering committee (1934 law); H. licensure prior to July 1, 1957, by graduation from an approved curriculum, and four years or more of experience satisfactory to the professional engineering committee (1935 law);
- I. licensure prior to July 1, 1957, by passing a written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved curriculum, and four years or more of experience satisfactory to the professional engineering committee (1952 law); J. licensure prior to July 1, 1967, by 24 years of experience satisfactory to the professional engineering committee, and by passing an oral examination (1957 law);
- K. licensure prior to July 1, 1967, by graduation from an approved curriculum prior to July 1, 1957, and passing the eight-hour professional examination (1957 law);
- L. licensure prior to July 1, 1979, by eight years of experience satisfactory to the professional engineering committee, and by having passed the eight - hour fundamentals and eight - hour professional examinations (1969 law);
- M. licensure prior to July 1, 1979, by 30 years of experience, the last 12 years of which must have been of outstanding nature and by having been nationally eminent among his peers (1967 law);
- N. for the purposes of endorsement, an approved engineering curriculum shall be an ABET accredited engineering curriculum of four years or more or equivalent as determined by the board.

## PART 4 INCIDENTAL PRACTICE

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### **16.39.4.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

### **16.39.4.2 SCOPE:**

Provisions for Part 4 apply to any person licensed as a professional engineer.

### **16.39.4.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.”

Subsection C of Section 61-23-10 NMSA 1978 prescribes that “the professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.”

Subsection K of Section 61-23-10 NMSA 1978 states “the board, in cooperation with the board of examiners for architects and the board of landscape architects shall create a joint standing committee to be known as the 'joint practice committee'.” Subsection L of Section 61-23-10 NMSA 1978 states “as used in the Engineering and Surveying Practice Act, 'incidental practice' shall be defined by identical regulations of the board of licensure for professional engineers and professional surveyors and the board of examiners for architects.”

### **16.39.4.4 DURATION:**

Permanent

### **16.39.4.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

### **16.39.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 39 is to define architectural work incidental to engineering and engineering work incidental to architecture as approved by the joint

practice committee and as an identical rule to Subsection G of Section 16.30.1.7 NMAC (board of examiners for architects).

#### **16.39.4.7 DEFINITIONS:**

[RESERVED]

#### **16.39.4.8 INCIDENTAL PRACTICE OF ARCHITECTURE AND ENGINEERING - as defined in Section 61-23-22(A) NMSA 1978**

**means:**

A. architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

B. engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

C. all buildings and related structures within the regulatory provisions of the New Mexico Uniform Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than six hundred thousand dollars (\$600,000) or having a total occupant load greater than 50, with the exception of:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height which are appurtenant to buildings described in Paragraph (1) and (2) of Subsection C of 16.39.4.8 NMAC; or

(4) nonresidential buildings, as defined in the uniform building code, or additions having a total occupant load of 10 or less and not more than two stories in height, which shall not include E-3 (Day Care), H (Hazardous), or I (Institutional) occupancies;

(5) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

D. the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project;

E. occupant load shall be defined and determined by the method set forth in Table 33-A of the Uniform Building Code (UBC).

## PART 5 SURVEYING--APPLICATIONS, EXAMINATIONS, PRACTICE OF SURVEYING, SEAL OF LICENSEE

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### **16.39.5.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

### **16.39.5.2 SCOPE:**

Provisions for Part 5 apply to any person certified as a Surveyor Intern, licensed as a professional surveyor, or to anyone applying for certification as a Surveyor Intern or licensure as a professional surveyor in New Mexico.

### **16.39.5.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” Subsection D of 61-23-10 NMSA 1978 states “the professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.”

### **16.39.5.4 DURATION:**

Permanent

### **16.39.5.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

### **16.39.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 39 is to clearly define the application and examination procedures, practice of surveying, and seal of licensee.

### **16.39.5.7 DEFINITIONS:**

- A. "ABET" is defined as the accreditation board for engineering and technology.
- B. "Augment", as it relates to curriculum in this part, shall refer to classes taken as a part of or in addition to a formal degree program.
- C. "Authoritative location" is defined as an accurately and precisely established location of a feature, object or boundary sufficient for use in establishing property rights, legal proceedings, or to protect the welfare and safety of the public.
- D. "Board-approved, four year curriculum in surveying" is defined as:
- (1) surveying curriculum of four years that has been accredited by ABET within at least three years of the applicant's graduation with a bachelor's degree in surveying;
  - (2) curriculum not accredited by ABET but with a minimum number of surveying credits required for accreditation by ABET;
- E. "Board-approved related science degree" is defined as:
- (1) A four year bachelor of arts or science degree that is augmented by a minimum of 18 core curriculum hours in surveying, 12 hours of higher mathematics and six hours of basic science.
  - (2) Core surveying classes shall include a minimum of a three hour semester course in each of the following areas:
    - (a) boundary law/ legal principles of land surveying;
    - (b) public land surveying system (PLSS);
    - (c) plane surveying;
    - (d) geodes
  - (3) The remainder of the 18 core curriculum hours in surveying may include classes in route surveying, geographic information systems, land development, global positioning systems, photogrammetry or geodesy, remote sensing, mapping, or professional ethics .
  - (4) 12 hours of higher mathematics may include college algebra, trigonometry, analytical geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistic and advanced calculus.



(5) Six hours of basic science may include physics, chemistry, geology, physical geography, biology, and astronomy.

F. “Four year”, as it relates to a minimum course of academic study in this part, means a program of study normally associated with a university, college or other accredited academic course of study that includes a minimum 120 semester hours.

G. “Geomatics”, as it relates to curriculum as discussed in these rules, will be considered synonymous with surveying or photogrammetry.

### **16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

A. Types of application - licensure as a professional surveyor or certification as a survey intern require that an applicant present his or her qualifications on forms prescribed by this board.

B. Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other state(s).

C. Board members shall not be used as references.

D. Applications for surveying intern certification will be accepted after an applicant has passed the fundamentals of surveying exam and has graduated from a board-approved, four (4)-year surveying curriculum, or if a graduate of an approved four (4)-year curriculum in a related science as defined by Subsection C of 16.39.5.7 NMAC above and augmented with four (4) years of combined office and field board approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the four (4) years of experience, but work prior to or while attending school may be counted toward the four (4) years of required experience at the discretion of the board.

E. Applicants for the principles and practices of surveying examination having graduated with a board-approved four (4)-year surveying curriculum of four (4) years or more, or with a related-science degree, as determined by the board shall have a minimum of four (4) years of experience acceptable to the professional surveying committee at the date of application and shall have passed the fundamentals of surveying examination.

F. No applicant will be eligible to take the professional surveying examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.5.8 NMAC.

G. Applicants for the professional surveying license will be accepted after applicant has passed the professional surveying exam and has fulfilled the education and

experience requirements. Successful passing of the professional surveying exam does not ensure licensure as a professional surveyor. To satisfy the statutory requirement for board-approved surveying experience prior to licensure, a candidate with a board-approved surveying curriculum of four (4) years or more as determined by the board shall have four (4) years of experience acceptable to the professional surveying committee. This experience may be acquired before or after certification as a surveying intern. A candidate with a related science degree shall have four (4) years of surveying experience acceptable to the professional surveying committee subsequent to certification as a surveying intern. After successfully completing the professional surveying examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 61.39.5.8 NMAC.

H. To update a professional survey (PS) application file in relation to experience, the applicant must complete an application update form and provide references acceptable to the professional surveying committee to verify each additional experience record.

I. Applications for licensure or certification by examination, comity or endorsement which have been approved by the professional surveying committee shall remain valid for three (3) years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee's satisfaction, evidence that the applicant's qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application.

K. All applicants for professional surveyor license shall show proficiency in the English language and shall have a minimum of four (4) years of experience if a graduate of a board approved, four (4) year surveying curriculum or eight (8) years if a graduate of a board approved related science curriculum, working in the United States under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

L. When considering surveying applicants who are graduates of educational programs from a school, college or university outside of the United States and its jurisdictions, or considering applicants from related science programs, the board will evaluate and approve the degrees on an individual basis. The Board may require an independent evaluation of the education and such evaluation shall be done through an organization approved by the board and at the expense of the applicant

### **16.39.5.9 EXAMINATIONS--SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

- A. Regularly scheduled examinations shall be held in accordance with NCEES examination schedules. Other examinations may be held at times and places as determined by the professional surveying committee.
- B. An applicant that fails the New Mexico state specific surveying examination will be notified of the next available examination sessions. A written request to retake the examination and payment of the examination fee shall be on or before the specified date set by the board. Any applicant that fails a NCEES examination will be notified by NCEES.
- C. An applicant that has not achieved a passing score on an examination within the three (3) year application period shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.
- D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one of the following:
- (1) an “open book” examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;
  - (2) a “closed book” examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or
  - (3) a “computer based” examination.
- E. Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.
- F. An applicant who has a question regarding the New Mexico state specific surveying examination shall put the question in writing to the professional surveying committee. The question will be considered at the next professional surveying committee meeting. The committee’s answer to the examinee shall be in writing. Questions regarding the completed fundamental of surveying examination or the principles and practice surveying examination shall be directed to NCEES.

### **16.39.5.10 PRACTICE OF SURVEYING:**

- A. A person or any organization shall not advertise or offer to practice surveying work or accept such work unless that person or a member of the organization is licensed by the board and is legally able to bind that organization by contract.

B. Neither persons nor organizations shall circumvent these rules.

C. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

D. The board will consider the use of the terms, "surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of surveying services. The board also considers the use of these terms or any modification or derivative of such terms in a domestic corporation's articles of incorporation or in a foreign corporation's certificate of authority as published by the New Mexico's secretary of state to constitute the offering of surveying services.

E. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit within 30 days, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be revised within 30 days and resubmitted to the board. F. Inclusions and exclusions to the practice of surveying. Land surveying does not encompass work products which represent only a generalized location of a feature, object, or boundary upon which the public would not reasonably rely as the precise location of that feature, object, or boundary.

(1) Activities included within the practice of surveying activities that must be accomplished by or under the responsible charge of a professional surveyor (unless specifically exempted in Subsection B of this Section) include, but are not limited to, the following:

(a) The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography. This includes maps and georeferenced databases prepared by any person or government agency where that data is provided to the public as a survey product.

(b) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information.

(c) Certification of positional accuracy of maps or measured survey data.

(d) Adjustment or authoritative interpretation of raw survey data.

- (e) Geographic information system (GIS)-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected.
  - (f) Authoritative interpretation of maps, deeds, and other land title documents to resolve conflicting data elements.
  - (g) Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control.
  - (h) Analysis, adjustment or transformation of cadastral data of the parcel layers with respect to the geodetic control layer within a geographic information system (GIS) resulting in the affirmation of positional accuracy.
- (2) Activities excluded from the practice of surveying. A distinction must be made in the use of electronic systems between making or documenting original measurements in the creation of survey products, versus the copying, interpretation, or representation of those measurements in such systems. Further, a distinction must be made according to the intent, use, or purpose of measurement products in electronic systems to determine a definitive location versus the use of those products as a locational reference for planning, infrastructure management, and general information. The following items are not to be included as activities within the definition of the practice of surveying:
- (a) The creation of general maps:
    - (i) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians.
    - (ii) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication.
    - (iii) Prepared for or by education institutions for use in the curriculum of any course of study.
    - (iv) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event.
    - (v) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and user guides.
  - (b) The transcription of previously georeferenced data into a geographic information system (GIS) or land information systems (LIS) by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise

definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(c) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

(d) The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

(e) The incorporation or use of documents or databases prepared by any federal agency into a Geographic information system (GIS)/ land information systems (LIS), including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps.

(f) Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data sources and dates, and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.

(g) Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data.

(h) Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

#### **16.39.5.11 SEAL OF LICENSEE:**

A. Each licensed professional surveyor shall obtain a seal/stamp which must be impressed on all plats, reports, etc., prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps and all facsimiles of signatures are not acceptable. Electronic signature as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be either the impression type seal, the rubber type, or a computer-generated facsimile. Computer-generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

C. The design of the seal/stamp shall consist of either:

(1) three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, "Professional Surveyor" and the licensee's name. The inner ring shall contain the words "New Mexico". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable; or

(2) a design approved by the board which contains the words "Professional Surveyor", the licensee's name, "New Mexico", and the license number issued by the board each in text no less than 0.2 inches in height. Professional surveyors who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. The seal and signature shall be placed on work only when it was under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

F. When the document contains more than one (1) sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two (2) or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet.

G. An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature.

#### **16.39.5.12 ENDORSEMENTS:**

For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional surveying committee will only recognize licensure granted by those authorities when the professional surveying committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineer and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-27.3 and 61-23-27.4 NMSA 1978". Conditions establishing eligibility

for licensure by endorsement shall have been met at the time of initial licensure.

Additionally, the applicant must have a current license in another state, the District of Columbia, a territory or a possession of the United States, or in a foreign country.

Conditions for endorsement for licensure as a professional surveyor shall be as follows:

A. Graduation from a four (4)-year board-approved surveying curriculum, four (4) years of experience satisfactory to the professional surveying committee, and passing of the fundamentals of surveying and professional surveying examinations (1995 law).

B. Graduation from an engineering or related science curriculum that are approved by the committee and augmented with eighteen (18) semester hours of surveying, eight (8) years of experience satisfactory to the professional surveying committee, and passing of the eight (8) hour fundamentals and eight (8) hour professional examinations (1995 law).

C. Licensure prior to July 1, 1995 by graduation from a two (2) year board-approved surveying or associated curriculum, eight (8) years of experience satisfactory to the professional surveying committee and passing of the eight (8) hour fundamentals and eight (8) hour professional examination.

D. Licensure prior to July 1, 1995 by graduation from a board- approved surveying or associated curriculum of at least forty-five (45) semester hours, eight (8) years of experience satisfactory to the professional surveying committee, and passing of the eight (8) hour fundamentals and eight (8) hour professional examination;

E. Licensure prior to July 1 , 1979, eight (8) years of experience satisfactory to the professional surveying committee and passing of the eight (8) hour fundamentals and eight (8) hour professional examinations. [16.39.5.12 NMAC - N, 7/1/2015]

## PART 6 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

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### **16.39.6.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505)476-4565.

### **16.39.6.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.



### **16.39.6.3 STATUTORY AUTHORITY:**

Section 61-23-10 (B) NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” 16.39.1 NMAC applies to both engineering and surveying.

### **16.39.6.4 DURATION:**

Permanent.

### **16.39.6.5 EFFECTIVE DATE:**

July 1, 2015, unless a later date is cited at the end of a section.

### **16.39.6.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to Section 61-23-10 (B) NMSA 1978.

### **16.39.6.7 DEFINITIONS:**

A. Military service member: means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. Recent veteran: means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

### **16.39.6.8 APPLICATION REQUIREMENTS:**

A. Applications for licensure shall be completed on a form provided by the department.

B. The information shall include:

- (1) completed application and fee;
- (2) satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Article 23 NMSA 1978.

### **16.39.6.9 RENEWAL REQUIREMENTS:**

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Article 23 NMSA 1978.

B. The licensee must submit the following documents at the time of renewal:

- (1) applicants, with board-approved engineering/surveying degrees shall submit their official transcript(s) provided directly from the university;
- (2) applicants with an accreditation board for engineering and technology (ABET) accredited engineering technology degree shall submit their official transcript(s) provided directly from the university;
- (3) acceptable replies from five (5) references, pursuant to Section 61-23-10 (B) NMSA 1978.

C. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period pursuant Section 61-23-10 (B) NMSA 1978.

## **PART 7 MISC--PROCEDURES FOR REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF CERTIFICATES AND DISCIPLINARY ACTION**

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### **16.39.7.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

### **16.39.7.2 SCOPE:**

Provisions for Part 7 apply to persons certified as engineer interns or surveyor interns, persons licensed as, professional engineers or professional surveyors, applicants for either licensure or certification, and persons who engage in the business or act in the capacity of a professional engineer or professional surveyor without being licensed by the board.

### **16.39.7.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of it procedures, meeting records,

examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” Part 7 applies to both engineering and surveying.

#### **16.39.7.4 DURATION:**

Permanent

#### **16.39.7.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

#### **16.39.7.6 OBJECTIVE:**

The objective of Part 7 is to define procedures for revocation, suspension, imposition of fines, reissuance of certificates and disciplinary action. It is also to define actions constituting violations of the Act.

#### **16.39.7.7 DEFINITIONS:**

[RESERVED]

#### **16.39.7.8 REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF LICENSES AND CERTIFICATES AND DISCIPLINARY ACTION:**

A. The board may impose fines as may be determined by the nature of the violation pursuant to Section 61-23-24 and 61-23-27.11 NMSA 1978.

B. A lost, mutilated or destroyed certificate shall be replaced only upon the written request of the licensee and payment of the required fee. The reissued certificate shall show the original license number and original date, shall be signed by the current chair and secretary of the board in office at that date, and shall carry the notation “Reissued (DATE) .”

#### **16.39.7.9 VIOLATIONS:**

A. For business entities using the words “engineering” or “surveying” in their titles or offering engineering or surveying services, the board's executive director shall write the business entity, enclosing an affidavit to be completed which identifies the member of the business entity who is licensed to practice in the state of New Mexico and who is an employee of and legally able to bind the business entity by contract. If no response to this request is received within 30 days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response 30 days from

the receipt of a refusal, the matter may be turned over to the attorney general's office for action. 16.39.7 NMAC 27

B. It shall be considered “a violation” under Paragraph (1) of Subsection A of Section 61-23-24 NMSA 1978 and Paragraph (1) of Subsection A of Section 61-23-27.11 NMSA 1978 of the Engineering and Surveying Practice Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules. It shall also be considered “a violation” under Subsection A of Section 61-23-23.1 NMSA 1978 and Subsection A of Section 61-23-27.15 NMSA 1978 of the Engineering and Surveying Practice Act for any person to act in the capacity of a professional engineer or a professional surveyor without being licensed by the board.

C. The practice or offer to practice engineering by a licensee of the board in any state, territory or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board. The practice or offer to practice surveying by a licensee of the board in any state, territory, or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board.

D. Each applicant or licensee shall notify the board, in writing, within 90 days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is directly related to the practice of engineering or surveying.

E. The board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for non-payment of child support.

## PART 8 CODE OF PROFESSIONAL CONDUCT-- ENGINEERING AND SURVEYING

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### **16.39.8.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

**16.39.8.2 SCOPE:**

Provisions for part 8 apply to persons certified as engineer interns or surveyor interns, licensed as professional engineers or professional surveyors or anyone applying for certification as an engineer intern or surveyor intern or licensed as a professional engineer or professional surveyor.

**16.39.8.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 8 applies to both engineering and surveying.

**16.39.8.4 DURATION:**

Permanent

**16.39.8.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

**16.39.8.6 OBJECTIVE:**

The objective of part 8 is to establish and maintain rules of professional conduct for professional engineers and professional surveyors.

**16.39.8.7 DEFINITIONS:**

In these Rules of Professional Conduct, the word "licensee" shall mean any person holding a current license or certification issued by the Board.

**16.39.8.8 PREAMBLE:**

A. In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following Rules of Professional Conduct shall apply to every person holding a certificate of licensure to perform engineering or surveying services in the State of New Mexico.

B. The Rules of Professional Conduct as promulgated herein are an exercise of the regulatory power vested in the Board by virtue of the acts of the legislature. These rules are in addition to but are not intended to supersede, the provisions of the New Mexico Engineering and Surveying Practice Act.

C. All persons licensed under the New Mexico Engineering and Surveying Practice Act are charged with having knowledge of the existence of these Rules of Professional Conduct and shall be deemed to be familiar with the provisions of these rules and to understand them. Such knowledge shall encompass understanding these rules of Professional Conduct and failure to follow these rules may be considered misconduct by the Board.

#### **16.39.8.9 RULES OF PROFESSIONAL CONDUCT:**

A. The protection of the public safety, health, welfare and property in the performance of professional duties.

(1) Perform those duties in conformance with accepted engineering and surveying practices.

(2) Notify their employer or client and such other authority as may be appropriate of any instance in which their professional judgment is overruled under circumstances endangering the public safety, health, welfare or property

(3) Approve and seal only those engineering and surveying documents which conform to applicable engineering and surveying standards.

(4) Shall not reveal privileged or confidential facts, data or information without prior consent of the client or employer except as authorized or required by law or this code.

(5) Refuse to associate in a business venture with any person or firm whom they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.

(6) Inform the board of any violation of this code. Cooperate with the board in furnishing information or assistance as may be requested by the board in matters concerning violations.

(7) Shall not assist or participate in the unlawful practice of engineering and surveying by a person or firm.

B. Specialization and the performance of services only in specific areas of competence.

(1) Licensees shall undertake assignments only when qualified by education, experience or examination in the specific technical fields of engineering or surveying involved.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competency, nor to any such plan or documents not prepared under their responsible charge.

(3) Licensees may accept an assignment when the total work involves technical fields beyond those in which they are qualified, providing their services are limited to those phases in which they are qualified and that the phases in which they are not qualified are performed by licensees who are properly qualified. In this instance, each qualified licensee will sign and seal the documents for their phase of the assignment.

C. The issuance of public statements.

(1) Licensees shall be objective and truthful in professional reports, statements or testimony. A professional report or professional opinion issued by or under the responsible charge of a licensee shall not contain any intentionally false, misleading or deceitful statements or testimony. Any report, statement or testimony by a licensee shall contain all relevant and pertinent information as required by accepted engineering or surveying principles.

(2) If a licensee issues statements on technical matters in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.

(3) A licensee who is competent in the subject matter may express publicly technical opinions that are found upon knowledge of the facts.

D. Professional relationships with employer or client.

(1) Licensees shall act in professional matters for each employer or client to avoid conflicts of interest. Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest or other circumstances which could reasonably be expected to influence their judgment or the quality of their services.

(2) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(3) Licensees shall not solicit or accept any gratuity, material favor, or any valuable consideration, directly or indirectly, from contractors, their agents, servants or employees or from any other party dealing with his client or employer in connection with any project for which he is performing or has contracted to perform engineering

or surveying services. (The phrase "valuable consideration" is defined to mean any act, article, money or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment.)

(4) Licensees in public service as a member or employee of a governmental body, agency or department shall not participate, directly or indirectly in deliberations or actions which would constitute a conflict of interest with respect to services offered or provided by him, his associates, or the licensee's business entity to such governmental body, agency or department.

(5) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their business entity serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of appropriate public authority.

(6) Licensees shall not reveal privileged or confidential facts, data or information obtained in a professional capacity without prior consent of the client or employer except:

(a) As provided in Subparagraph (b) and (f) of Paragraph (1) of Subsection A of 16.39.8.9 NMAC.

(b) As authorized or required by law.

(c) Any document that is a matter of public record by virtue of it being on file with a public agency.

(d) Any fact, data or information which is clearly the property of the engineer or surveyor.

#### E. Solicitation of professional employment.

(1) Licensees shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other representations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

(2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure or influence the award of work and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, and which may be reasonably



construed by the public as having the effect or intent to influence the award of a contract.

F. Avoiding conduct or practice that deceives the public.

(1) Licensees shall avoid the use of a statement containing a material misrepresentation of a fact or omitting a material fact.

(2) Consistent with the foregoing, licensees may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

G. Interaction with other licenses.

(1) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees.

(2) Licensees in private practice shall not review the work of another licensee for the same client, except with the knowledge of such licensees, or unless the connection of such licensee with the work has been terminated.

(3) Licensees in governmental, industrial, or educational employment are entitled to review and evaluate the work of other licensees when so required by their employment duties.

## References

New Mexico State Board of Licensure for Professional Engineers and Professional Surveyors, Laws, Rules and Policies

<http://www.sblpes.state.nm.us/laws-rules-and-policies.aspx>

New Mexico Statutes, Ch. 61 Professional and Occupational Licenses, Article 23 Engineering and Surveying, (61-23-1 to 61-23-34)

[https://laws.nmonesource.com/w/nmos/Chapter-61-NMSA-1978-2018?zoupio-debug#!fragment/zoupio-Toc5044120/\(hash:\(chunk:\(anchorText:zoupio-\\_Toc5044120\),notesQuery:",scrollChunk:!n,searchQuery:'CH.%2061',searchSortBy:RELEVANCE,tab:toc\)\)](https://laws.nmonesource.com/w/nmos/Chapter-61-NMSA-1978-2018?zoupio-debug#!fragment/zoupio-Toc5044120/(hash:(chunk:(anchorText:zoupio-_Toc5044120),notesQuery:)

New Mexico Administrative Code: Title 16 Occupational and Professional Licensing, Ch. 39 Engineering And Surveying Practitioners, (16.39.1 to 16.39.8 NMAC)

<http://164.64.110.134/nmac/T16C039>

National Society of Professional Engineers, Code of Ethics

<http://www.nspe.org/resources/ethics/code-ethics>