

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 60 PUBLIC ACCOUNTANTS
PART 5 CODE OF PROFESSIONAL CONDUCT

16.60.5.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.
[16.60.5.1 NMAC - Rp 16 NMAC 60.7.1, 2/14/2002]

16.60.5.2 SCOPE: This part applies to the code of professional conduct as promulgated under the authority granted by applicable New Mexico statutes, which delegates to the State of New Mexico Public Accountancy Board the power and duty to prescribe rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy.
[16.60.5.2 NMAC - Rp 16 NMAC 60.7.2, 2/14/2002]

16.60.5.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.
[16.60.5.3 NMAC - Rp 16 NMAC 60.7.3, 2/14/2002]

16.60.5.4 DURATION: Permanent.
[16.60.5.4 NMAC - Rp 16 NMAC 60.7.4, 2/14/2002]

16.60.5.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.
[16.60.5.5 NMAC - Rp 16 NMAC 60.7.5, 2/14/2002]

16.60.5.6 OBJECTIVE: The code of professional conduct prescribes the obligation that persons engaged in the practice of public accountancy have to their clients and to the public to maintain independence of thought and action; to strive continuously to improve one's thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles and generally accepted auditing standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; to uphold the standards of the public accountancy profession; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.
[16.60.5.6 NMAC - Rp 16 NMAC 60.7.6, 2/14/2002]

16.60.5.7 DEFINITIONS: [RESERVED]
[16.60.5.7 NMAC - Rp 16 NMAC 60.7.7, 2/14/2002]

16.60.5.8 DUTY TO ABIDE BY CODE OF PROFESSIONAL CONDUCT:

A. In addition to its own rules of conduct, the board adopts the American institute of certified public accountants' (AICPA) professional standards: code of professional conduct. All certified public accountants and registered public accountants holding a current certificate and all holders of firm permits shall comply with the board's rules of conduct and the AICPA code of professional conduct or any successor code of professional conduct promulgated by AICPA in meeting and maintaining their responsibilities and requirements of ethical and professional conduct in the practice of public accountancy. This code of professional conduct is on file and available for review at the offices of the board and is available from AICPA.

B. By accepting licensure to engage in the practice of public accountancy or to use titles which imply a particular competence so to engage, the licensee also accepts the obligations of the profession and the duty to abide by the board's rules of conduct and the AICPA code of professional conduct.

C. Any departure from either the rules of conduct or the code of conduct must be justified, and individuals who do not adhere to them may be subject to board disciplinary action.
[16.60.5.8 NMAC - Rp 16 NMAC 60.7.6, 2/14/2002]

16.60.5.9 BOARD DISCIPLINARY ACTION:

A. Any licensee whose certificate or firm permit issued by the board is subsequently suspended or revoked shall promptly return such certificate/license to the board.

B. Decisions by the board following hearings under the Uniform Licensing Act and the Public Accountancy Act will, if a charge is sustained, be made public.

(1) Decisions that do not sustain a charge or are subject to agreement in lieu of a hearing may be made public at the board's discretion.

(2) A list of all individuals whose licenses have been suspended or revoked will be published on quarterly basis in a newspaper of general circulation as well as in the newspaper of circulation closest to the individual's place of business.

[16.60.5.9 NMAC - N, 2/14/2002; A, 1/15/2004]

16.60.5.10 BOARD AUTHORITY TO REVIEW DOCUMENTS: The board may solicit and receive publicly available reports and related financial statements from clients, public agencies, banks, and other users of financial statements of certificate holders/licensees and firm-permit holders and individuals with privileges under the act on a general and random basis without regard to whether an application for renewal of the particular licensee is then pending or whether there is any formal complaint or suspicion of impropriety on the part of any particular licensee or individual. The board may review such reports and otherwise proceed with respect to the results of any such review under provisions, authorities, and remedies of the act.

[16.60.5.10 NMAC - N, 2/14/2002]

16.60.5.11 RULES OF CONDUCT: In addition to abiding by the AICPA code of professional conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

A. Responses to board communications. The individual applicant, certificate holder, or registration holder of a certificate/license or firm permit shall, when requested by the board, substantively and honestly respond in writing to all communication from the board within thirty days of receipt of board communications. Board communications may be sent by regular mail, registered or certified mail, hand delivered or by commercial courier, to the last known address on record with the board. Board communications may also come by email to the last known email address on record with the board. The individual may respond to the board by regular mail, registered or certified mail, hand delivery, by commercial courier. Email is only a valid response to the board if the original communications from the board was delivered by email.

(1) Failure to respond substantively and honestly to written board communications or failure to furnish requested documentation or working papers constitutes conduct indicating lack of fitness to serve the public as a professional accountant and shall be grounds for disciplinary action.

(2) Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

B. Reportable events. A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

(1) Receipt of a final peer review report indicating "pass with deficiencies" or "fail" or a public company accounting oversight board (PCAOB) firm inspection report containing deficiencies or identifying potential defects in the quality control systems. For the purposes of Subsection B of 16.60.5.11 NMAC, "deficiency reports" are reports indicating either "pass with deficiencies" or "fail" as defined in the AICPA peer review standards.

(2) Receipt of a second consecutive deficiency peer review report.

(3) Imposition upon the license of discipline, including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit, or practice rights by:

(a) the securities and exchange commission (SEC), the PCAOB, or the internal revenue service (IRS); or

(b) another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(c) any other federal or state agency regarding the licensee's conduct while rendering professional services; or

(d) any foreign authority or credentialing body that regulates the practice of accountancy.

(4) The occurrence of any matter reportable that must be reported by the licensee to the PCAOB pursuant to Sarbanes Oxley Action Section 102(b)(2)(f) and PCAOB Rules and forms adopted pursuant thereto.

(5) Notice of disciplinary charges filed by the SEC, the PCAOB, the IRS, or another state board of accountancy, or a federal or state taxing, insurance or securities regulatory authority, or a foreign authority or credentialing body that regulates the practice of accountancy.

(6) Unless prohibited by the terms of the agreement, any judgment, award or settlement of a civil action or arbitration proceeding of \$150,000 or more in which the licensee was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall only notify the board regarding civil judgments, settlements, or arbitration awards directly involving the firm's practice of public accounting in this state.

(7) ~~[Criminal charges, deferred prosecution or conviction]~~ Conviction or plea of no contest to which the licensee is a defendant if the crime is: a criminal conviction listed in subsection A of Section 16.60.5.14 NMAC.

~~[(a) any felony under the laws of the United States or of any state of the United States or any foreign jurisdiction; or~~

~~(b) a misdemeanor if an essential element of the offense is dishonesty, deceit, or fraud.]~~

C. Frivolous complaints. An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule.

D. Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support, the board or its legally authorized designee shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

E. Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

F. A CPA firm permit holder shall display the firm permit in a clearly visible place to the public in the office or space for which the permit is issued. The license(s) of the qualifying CPA and any licensed CPA employee or CPA associated with the firm shall be displayed in a clearly visible place to the public in the office or space for which the firm permit is issued/registered. Any licensed CPA or firm permit holder shall provide a copy of their license or firm permit upon request.

[16.60.5.11 - Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 2/14/2002; A, 6/30/2008; A, 1/1/2011; A, 1/17/2013; A, 9/15/2015; A, 10/1/2020; A, 12/31/2021]

16.60.5.12 CONFLICT OF INTEREST PROVISIONS:

A. A licensee shall not perform services for a client if the performance of such services will be directly or substantially adverse to another client unless:

(1) the licensee reasonably believes the performance of such services for one client will not adversely affect the relationship with the other client; and

(2) after consultation, each client consents in writing to allow the licensee to provide services to the other client.

B. Divorce proceedings, business dissolutions, and similar transactions are deemed to be directly or substantially adverse to a client.

C. A licensee shall not perform services for a client if the licensee's ability to perform such services may be materially limited by his responsibilities to another client or a third person or by his own interests unless:

(1) the licensee reasonably believes the performance of services will not adversely affect the relationship with the client;

(2) the relationship is disclosed to the client; and

(3) the client consents in writing after consultation.

D. A licensee shall not enter into a business transaction with a client for services other than public accountancy or knowingly acquire an ownership, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the licensee acquires the interest are fair and reasonable to the client;

(2) the terms are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(3) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(4) the client consents in writing thereto.

E. A licensee shall not use information relating to the performance of services for a client to the disadvantage of the client.

F. A licensee who performs services for two or more clients involved in a dispute shall not participate in making an aggregate settlement of the claims of or against the clients unless each client consents in writing after consultation. Consultation shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each party involved in the settlement.

[16.60.5.12 NMAC - N, 5/15/2006; A, 1/1/2007]

16.60.5.13 UNAUTHORIZED USE OF THE CPA TITLE:

A. Pursuant to Section 61-28B-26 and 61-28B-13 NMSA 1978, a person whose principal place of business is not in New Mexico can use the term CPA while serving clients in New Mexico as long as the CPA is actively licensed in good standing in his principal place of business and is eligible for practice privileges in New Mexico.

B. A person licensed as a CPA in another jurisdiction who moves to New Mexico with the intention of using the CPA title (whether in public practice, industry, government, or education) must obtain a certificate of from the board prior to using the CPA title in any way in this state. Oral or written statements such as "I am a licensed CPA in another jurisdiction" when used in connection with the individual's name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with the individual's services as an accountant do not exempt the individual from obtaining a certificate of qualification from the board. Non-resident CPAs who wish to practice in New Mexico may do so only in accordance with Section 61-28B-26 NMSA 1978.

[16.60.5.13 NMAC - N, 9/15/2015; A, 10/1/2020]

16.60.5.14 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(1) Crimes involving homicide, murder, manslaughter, or resulting in death;

(2) Crimes involving human trafficking, or trafficking in controlled substances;

(3) Kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;

(4) Rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

(5) Crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, injury to pregnant woman, custodial interference, breaking and entering, sabotage, property damage, or financial exploitation;

(6) Crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud or unauthorized use of a credit card; receiving stolen property, money laundering, burglary tools, or stolen vehicles;

- (7) Crimes involving arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;
- (8) Crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;
- (9) Violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act.;
- (10) Violations of the Model State Commodity Code, the New Mexico Uniform Securities Act, the Mortgage Loan Company Act, Uniform Money Services Act, or the New Mexico Mortgage Loan Originator Licensing Act.
- (11) Crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;
- (12) Crimes involving jury tampering;
- (13) Crimes involving escape from custody, jail or penitentiary;
- (14) Crimes involving harboring or aiding a felon;
- (15) Crimes involving tax evasion or tax fraud;
- (16) Willful failure to collect and pay over taxes;
- (17) Crimes involving attempts to evade or defeat any tax;
- (18) Crimes involving violations of officers or employees engaging in the administration of the property tax who buy property sold for delinquent property taxes that is unlawful;
- (19) Crimes involving paying or receiving public money for services not rendered;
- (20) Crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;
- (21) Crimes involving violations of the Cigarette Enforcement Act;
- (22) Crimes involving the Savings and Loan or the Credit Union Act;
- (23) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;
- (24) Medicaid Fraud,
- (25) An act or omission , with intent to defraud, expressly declared to be unlawful by the Banking Act,
- (26) Crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;
- (27) Crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
- (28) Crimes involving altering or changing engine or other number of a vehicle or motor vehicle;
- (29) Crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;
- (30) Crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;
- (31) Crimes involving making or permitting a false public voucher;
- (32) Crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;
- (33) Crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so, or violations of the New Mexico Uniform Securities Act;
- (34) Crimes involving extortionate extensions of credit or racketeering;
- (35) Crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;
- (36) Crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;

- (37) Failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (38) Crimes involving the practice of medicine, dentistry or osteopathic medicine without a license or authorization of the appropriate regulating authority;
- (39) Fourth or subsequent driving under the influence of intoxicating liquor or drugs;
- (40) Crimes involving controlled substances, including violations of the Controlled Substances Act;
- (41) Crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;
- (42) Crimes involving violations of the New Mexico Subdivision Act or the Mortgage Foreclosure Consultant Prevention Act;
- (43) Misuse of funds;
- (44) Intent to defraud uses on a public security or instrument of payment;
- (45) Crimes involving a violation of the Governmental Conduct Act; or
- (46) An attempt, solicitation, or conspiracy involving any of the felonies in this subsection.
- B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
- C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
- D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.
- E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.60.5.14 NMAC - N, 12/31/2021]

HISTORY OF 16.60.5 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives; BPA 84-1, Code of Professional Conduct, filed 7/9/1984. BPA 95-1, Board; Powers and Duties, filed 4/21/1995.

History of Repealed Material:

16 NMAC 60.7, Code of Professional Conduct, filed 9/27/1995; 16 NMAC 60.9, Specialty Designations, filed 9/27/1995; and 16 NMAC 60.10, Parental Responsibility Act, filed 9/27/1995, repealed effective 2/14/2002.

Other History:

16 NMAC 60.7, Code of Professional Conduct, filed 9/27/1995; 16 NMAC 60.9, Specialty Designations, filed 9/27/1995; and 16 NMAC 60.10, Parental Responsibility Act, filed 9/27/1995, replaced by 16.60.5 NMAC, Code of Professional Conduct effective 2/14/2002.