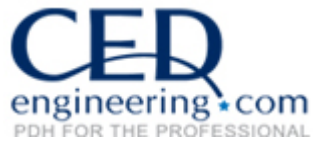

Engineering Ethics for New Mexico Professional Engineers

Course No: NM2-001
Credit: 2 PDH

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Chapter 1

Overview of the NM Engineering Laws and Rules of Professional Responsibility

Engineering Ethics

Engineering ethics is (1) the study of moral issues and decisions confronting individuals and organizations involved in engineering and (2) the study of related questions about moral conduct, character, ideals and relationships of peoples and organizations involved in technological development (Martin and Schinzinger, *Ethics in Engineering*).

New Mexico Board for Licensure of Professional Engineers and Surveyors

The New Mexico Board for Licensure of Professional Engineers and Surveyors is the primary government body that regulates the practice of engineering within the State of New Mexico. The Board consists of ten members as follows: five licensed professional engineers (at least one of whom shall be in engineering education), three licensed professional surveyors and two public members. All ten members are appointed by the Governor for staggered terms of five years each.

The Board has the authority to implement provisions of Chapter 61, Article 23 of the New Mexico Statutory Authority (NMSA), "Engineering and Surveying Act" or Title 16, Chapter 39 of the New Mexico Administrative Code (NMAC), "Professional Engineering and Professional Surveying Rules". Pertinent sections of the laws and rules present the code of professional conduct for NM professional engineers.

New Mexico Statutory Authority (NMSA)

The New Mexico Statutes are a collection of state laws organized by subject area into a code made up of titles, chapters and articles. The New Mexico Statutes were last updated in July 2012 by laws that create, amend, or repeal statutory material. These statutes are presented in Chapter 2.

The New Mexico Legislature found that it was necessary in the interest of public health and safety to regulate the practice of engineering in the State of New Mexico and thus created Chapter 61, Article 23, "Engineering and Surveying Practice Act". Under this law, the New Mexico State Board for Licensure of Professional Engineers and Surveyors is responsible for reviewing applications, administering examinations, licensing qualified applicants, and regulating the practice of engineering throughout the state.

New Mexico Administrative Code (NMAC)

The New Mexico Administrative Code is a compilation of the rules and regulations of the New Mexico regulatory agencies. Its counterpart in the federal system is the *Code of Federal Regulations*. It is organized by titles with each title number representing a department, commission, board or other agency. The set has a single comprehensive index volume. The spines of the volumes indicate which titles are included.

The NMAC states the rule followed by statutory authority, implementation and a history of the rule. The set is annotated with decisions of the Federal courts, State appellate courts, State Attorney General opinions, final and recommended orders of the Division of Administrative Hearings and final agency orders. At the end of each rule in the NMAC, a history note is located starting with title number. The history note indicates when the rule has been modified, renumbered, or repealed.

Similar to Chapter 61, Article 23 of the New Mexico Statutes, Title 16, Chapter 39 of the NMAC pertains exclusively to the New Mexico Board for Licensure of Professional Engineers and Surveyors and its functions with respect to the practice of engineering. These rules are presented in Chapter 3.

New Mexico Board Disciplinary Process

Once a complaint is filed, it is entered into the case management system, issued a case number, and is assigned to an investigator. The investigator acts as an impartial, fact-finding third party and does not “represent” the complainant, the Board, or the respondent. The complainant will be notified of the initiation of the investigation and of any action taken. A copy of the complaint will be sent to the licensee with a request to respond to the allegations.

When the investigation is complete, the investigator prepares a written report, which is presented to either the Professional Engineering Committee or the Professional Surveying Committee of the Board during a regular scheduled meeting. The Committees usually meet in conjunction with the entire board in accordance to a set schedule, usually on a quarterly basis.

The appropriate committee will review the facts of the complaint and make a determination. The committee have several options open to them, including determining that the case needs more information and refer the matter back to the investigator, deferring it until the next scheduled meeting, stating that the respondent has rectified the matter and close the case, and/or find that the charges unfounded, trivial, or outside the Board’s jurisdiction, in which case they are dismissed.

If a case is not resolved or the allegations are of a grave nature, the committee may request that staff refer the matter to the New Mexico Office of the Attorney General, Litigation Division for the issuance of a Notice of Contemplated Action (“NCA”). If there is sufficient evidence of a violation, an NCA will be issued; if not, it will be returned to the Board. The NCA notifies the respondent of the state's evidence regarding infractions and advises of the right to request a hearing. Hearings are scheduled before a Committee or a Hearing Officer. All hearings are conducted in accordance with the provisions of the New Mexico Uniform Licensing Act. In certain cases, a Stipulated Order may be proposed. If accepted by the Board, the need for a hearing may be eliminated.

After the Board considers the proceedings, a discipline action will be determined. If an individual is found to have violated the New Mexico Engineering and Surveying Practice Act, related sections of the New Mexico Administrative Code, Rules of Professional Conduct, and/or the Minimum Standards for Surveying in New Mexico, they may be issued a reprimand, assessed a fine of up to five thousand dollars (\$5,000) per violation, placed on probation subject to specific conditions, suspended, revoked, and/or refuse to renew a certificate of licensure.

Several disciplinary cases executed by the board are discussed in Chapter 4 to familiarize the engineer with the range of violations and respective penalties. These disciplinary cases were extracted from the official website of the New Mexico Board for Licensure for Professional Engineers and Surveyors. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Board.

Chapter 2

Engineering and Surveying Practice Act (July 1, 2017)

Chapter 61, Article 23, "Engineering and Surveying Practice Act"

The following are excerpts from Chapter 61, Article 23 of the New Mexico Statutes. If you wish to review the entire article, please visit the website of the New Mexico Board at:

http://www.sblpes.state.nm.us/uploads/FileLinks/3a22dfad719d4b208229a6ac3d17b69c/2017_NM_Engineering_and_Surveying_Practice_Act_1.pdf

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

- A. The board shall issue licenses pursuant to the provisions of 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.
- 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 that 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.

61-23-21. 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.
- A. 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.

61-23-24. 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, 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.

Chapter 3

New Mexico Professional Engineering and Professional Surveying Rules (December 28, 2017)

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS

The following are excerpts from Title 16, Chapter 39 of the New Mexico Administrative Code. If you wish to review the entire title, please visit the website of the New Mexico Board at:

http://www.sblpes.state.nm.us/uploads/FileLinks/3a22dfad719d4b208229a6ac3d17b69c/NMAC_2017_Book.pdf

16.39.7 – MISC: PROCEDURES FOR REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF CERTIFICATES AND DISCIPLINARY ACTION

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.

[16.39.7.6 NMAC - Rp, 16 NMAC 39.7.6, 1/01/2002]

16.39.7.8 REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF 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)."

[16.39.7.8 NMAC -Rp, 16 NMAC 39.7.8, 1/01/2002; A, 7/01/2015]

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.

- 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.

[16.39.7.9 NMAC - Rp 16 NMAC 39.7.9, 1/01/2002; A, 7/01/2006; A, 7/01/2015; A, 12/28/2017]

16.39.8 - CODE OF PROFESSIONAL CONDUCT: ENGINEERING AND SURVEYING

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.

[16.39.8.6 NMAC - Rp, 16 NMAC 39.8.6; 1/01/2002; A, 7/01/2006]

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.

[16.39.8.7 NMAC - Rp, 16 NMAC 39.8.7, 1/01/2002]

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.

[16.39.8.8 NMAC - Rp, 16 NMAC 39.8.8, 1/01/2002]

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 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.

[16.39.8.9 NMAC - Rp, 16 NMAC 39.8.9, 1/01/2002; A, 7/1/2015; A, 12/28/2017]

Chapter 4

Review of Disciplinary Cases

The following disciplinary cases were extracted from the website of the New Mexico Board for Licensure for Professional Engineers and Surveyors. In selecting these cases, different scenarios of violations are depicted along with their corresponding final decisions issued by the Board.

CASE No: 05-05-38B
VIOLATION: Retaining the Services of an Engineer not Licensed in NM

Case Review:

The Board's Notice of Contemplated Action alleged Respondent issued a request for proposal and subsequently signed the resulting contract in 2005 that included the provision for engineering services by an engineer who was not licensed to practice engineering in New Mexico at the time in violation of NMSA 1978, Sections 61-23-24 (7), violation of the rules of professional responsibility for professional engineers and 61-23-24 (10), aided and abetted a violation by a non-licensed engineer.

Board Decision:

August 21, 2007 Agreement of Settlement: Respondent did not admit the allegations made against him, but wished to resolve the matter by waiving his rights to a hearing; Respondent hired an engineer not licensed in NM during the relevant time of the allegations against him but who became licensed thereafter; letter of reprimand; successfully complete twenty (20) hours of professional ethics.

CASE No: 04-04-08
VIOLATION: Failing to Protect Public Safety, Health, Welfare and Property

Case Review:

Respondent violated the Engineering and Surveying Practice Act and the Board's Rules of professional Conduct with regard to building foundation design plans done in 2000 and building shell design plans in 2000. Part of the violations also included the rules on incidental practice between engineers and architects because his engineering design work was provided on a project with a building construction value greater than \$400,000.00 and with a total occupant load greater than fifty (50) people; Respondent failed to protect public safety, health, welfare and property when he did not perform his professional duties in conformance with accepted engineering practices, one, by his structural engineering design of a building shell that included at least four design and safety deficiencies and he had no

structural engineering experience for more than ten years and, two, by his signing and sealing design plans that should properly be signed and sealed by other professionals

Board Decision:

March 5, 2007 Decision & Order: pay fine of \$5,000.00; pay costs of the administrative disciplinary proceedings - \$5,125.20; suspension of the license for (1) year. Failure to timely pay the fine and/or administrative proceedings costs shall result in the Board's issuance of an order to show cause why his license to practice engineering in New Mexico should not be immediately revoked. Respondent appealed the Board's decision in the 2nd Judicial District Court, April 4, 2007 and was granted a stay on the enforcement of the Board's decision pending the Court appeal proceeding.

CASE No: 05-04-15
VIOLATION: Practicing Outside Area of Expertise

Case Review:

The Board's Notice of Contemplated Action alleged practice outside Respondent's area of expertise [71-23-24(A)(7) and 16.39.8.9(A)(1)(a)(b) and 16.39.8.9(B)(1) and (2) code of professional conduct. Respondent failed to request a hearing before the Board. Board found Respondent to be in violation of the cited statutes and rules.

Board Decision:

August 22, 2006 Decision & Order: Revocation of license.

CASE No: 04-03-14
VIOLATION: Stamping and Sealing Plans for Others

Case Review:

Board found Respondent to be in violation of the Act and the Board's rules of professional conduct (by stamping and sealing plans for which he was neither in responsible charge of nor directly responsible for the work issued.)

Board Decision:

May 8, 2005 Decision & Order with conditions:
Probation - 2 years (with no valid complaints during this period filed against him that would result in adverse action by Board)

Fine - \$2,000
Costs - \$452
Education - 20 hours of engineering ethics

CASE No: 99-99-51/53/55/57
VIOLATION: Performing Incomplete and Faulty Work

Case Review

Respondent was served with four notices of contemplated actions for violations of the statutes and rules and regulations, which included unethical practices (allegations of deception, incomplete and faulty work, and breach of contracts).

Respondent was served with an Order to Show Cause why the license should not be permanently revoked since conditions of the Stipulated Order were not met. Hearing was held 12/14/2001.

Respondent was found to have violated the NM Engineering & Surveying Practice Act and the Board's rules by not complying with the terms and conditions of the October 20, 1999 Stipulated Agreement and Order.

Board Decision:

December 18, 2001 Decision & Order: Permanent Revocation. History: October 20, 1999

Respondent agreed to enter into a Stipulated Agreement with the Board for the Suspension of his license for a period of six months from 1/1/00 to 6/30/00. If conditions were not met, automatic suspension/revocation would occur. Respondent agreed that from 10/99 through 12/99 he would make complainants "whole" in the four cases & complete all on-going projects prior to suspension.

Fine: \$2,000
Costs of Proceedings: \$93.78
Course completion: Surveying Ethics
Appearance before board prior to reinstatement of license

CASE No: 01-00-12
VIOLATION: Issuing Misleading Public Statements

Case Review

Respondent violated NMAC, title 16, chapter 39, part 8, paragraph 9.3.1, The issuance of public statements. 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.

Board Decision:

Letter of Reprimand issued on July 21, 2001

Appendix A

References

NM Statutes, Chapter 61, Article 23, Engineering and Surveying Practice Act, 2012

http://www.sblpes.state.nm.us/uploads/FileLinks/3a22dfad719d4b208229a6ac3d17b69c/2017_NM_Engineering_and_Surveying_Practice_Act_1.pdf

NM Administrative Code, Title 16, Chapter 39, Professional Engineering and Surveying Rules

http://www.sblpes.state.nm.us/uploads/FileLinks/3a22dfad719d4b208229a6ac3d17b69c/NMAC_2017_Book.pdf